

**Self-Evaluation Report  
to the  
Sunset Advisory Commission**



***Submitted by the  
Texas Board of Law Examiners***

***August 2015***

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**Texas Board of Law Examiners  
Self-Evaluation Report**

**I. Agency Contact Information**

**Board of Law Examiners  
Exhibit 1: Agency Contacts**

	Name	Address	Telephone & Fax Numbers	Email Address
<b>Agency Head</b>	Susan Henricks	205 W. 14 <sup>th</sup> Street, Suite 500 Austin, TX 78701	512-463-8929 512-463-5300	<a href="mailto:susan.henricks@mail.capnet.state.tx.us">susan.henricks@mail.capnet.state.tx.us</a>
<b>Agency's Sunset Liaison</b>	Rebecca Henly	205 W. 14 <sup>th</sup> Street, Suite 500 Austin, TX 78701	512-463-8926 512-463-5300	<a href="mailto:rebecca.henly@mail.capnet.state.tx.us">rebecca.henly@mail.capnet.state.tx.us</a>

**II. Key Functions and Performance**

**A. Provide an overview of your agency's mission, objectives, and key functions.**

It is the responsibility of the Board of Law Examiners ("Board" or "BLE") to: (a) determine whether all candidates for a Texas law license possess present good moral character and fitness; (b) determine whether all candidates for a Texas law license have adequate law study; (c) examine each eligible candidate and give failing candidates an analysis of their performance on the bar examination; and (d) determine whether Applicants who are licensed attorneys in another state meet the requirements for a license to practice law in Texas. These responsibilities have been substantially the same since 1919.

The Supreme Court of Texas has adopted rules that govern many aspects of the Board's activities, including reviewing each candidate's qualifications for admission, developing and administering the Texas Bar Exam, and recommending candidates for licensure or conditional licensure. In conjunction with the Supreme Court's *Rules Governing Admission to the Bar of Texas*, the Texas Legislature has enacted a statute, Texas Government Code Section 82, that addresses the responsibilities of the Board, key provisions of which are as follows:

1. Section 82.022 outlines the authority of the Supreme Court of Texas to adopt rules on eligibility and on the manner in which the Texas Bar Examination is conducted including the legal topics covered by the examination that is administered by the Board.
2. Section 82.004 requires the Board to determine the eligibility of candidates for examination for a license to practice law in Texas, then to examine each eligible candidate's qualifications to practice law.
3. Section 82.004(c) prohibits the Board from recommending any person for a license to practice law unless the person has shown to the Board, in the manner prescribed by the

Supreme Court of Texas, that the person is of sufficient capacity, attainment, and moral character for that person to be licensed.

These statutory provisions, together with the *Rules Governing Admission to the Bar of Texas*, as adopted by the Supreme Court of Texas, are published in the Board's rulebook, appear in full on the Board's website, and are attached to this document.

**B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?**

Yes. Qualification of Applicants for admission to the State Bar of Texas is still needed to protect the public and the judicial system from unqualified or unfit practitioners.

**C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?**

The Board has commissioned psychometric audits of the Texas Bar Exam in 2008 and 2013, to aid the Board in determining if the Texas Bar Exam is being conducted consistent with best practices. In response to the 2008 audit, the Board modified its exam procedures. The 2013 audit concluded that the February and July 2013 Texas Bar Exams had exceptionally high score reliability.

Board operations are funded by revenue from fees collected from Bar Exam Applicants, according to a fee schedule set by the Texas Supreme Court. The Board's budget is approved by the Texas Supreme Court. The Board maintains a reserve fund in the event that revenue does not cover expenses. Since interest rates have declined and the Board has lost significant interest income, maintaining operations within budget constraints has been more challenging but the Board has only utilized reserve funds to meet its expenses during three budget cycles and the amount of expenses exceeding revenues was not material.

**D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?**

The agency's enabling statute is generally consistent with the Board's mission and objectives. As further detailed in this report, the Board recommends that the Legislature delegate to the Texas Supreme Court determination of the deadlines for filing applications to take the Bar Exam, completing investigations and filing the Declaration of Intention to Study Law. In 2003, in response to information reported by the Board, the Legislature enacted some changes to the deadlines for filing applications, allowing for late filing and payment of a late fee. Elimination of the statutory deadlines set by the Supreme Court would allow greater flexibility. In addition, as further detailed in Section IX of this Report, the current statutory fee permitted has not been increased since 1985 and does not afford the Supreme Court adequate discretion in setting fair and adequate fees.

**E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

No other state or federal agency is engaged in qualifying Applicants for admission to the Bar in Texas. The Texas Supreme Court is ultimately responsible for admitting Applicants and it relies entirely on the Board to determine those Applicants who are qualified to be certified for admission by the Supreme Court.

**F. In general, how do other states carry out similar functions?**

Other states typically consider licensing of lawyers to be a judicial function, exercised by the chief judicial body of the state. Most states provide for an agency similar to the BLE to perform the work of investigating Applicants, qualifying them for admission and administering the state's bar examination.

**G. What key obstacles impair your agency's ability to achieve its objectives?**

The number of persons attending and graduating from law school in Texas and nationwide has declined since 2009. Although this fact is not necessarily an obstacle, it is a significant factor potentially affecting the Board's ability to achieve its objectives with the existing resources and fee structures.

**H. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).**

Law school enrollment has declined generally since 2009. If this trend continues, and if the number of bar Applicants declines further in the future, the Board may find it difficult to perform all of its functions from fee revenue, alone. Because the Board maintains substantial sums of cash for operating expenses and reserves, an increase in interest rates might help maintain sufficient revenue despite a decline in applications.

Enforcement actions by the U.S. Department of Justice may impact the Board's investigation of Applicants with a history of mental illness or chemical dependency. Other developments in the interpretation and enforcement of the Americans with Disability Act, as amended in 2008, may increase the number of Applicants who are entitled to testing accommodations that must be provided at the Board's expense.

**I. What are your agency's biggest opportunities for improvement in the future?**

Expanded use of technology provides the opportunity to increase efficiency and maintain reasonable fee schedules, despite increasing operating costs, particularly related to administration of the Bar Exam.

**J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.**

**Board of Law Examiners**  
**Exhibit 2: Key Performance Measures — Fiscal Year 2014**

Not applicable. The Board of Law Examiners does not have performance measures established by the Legislature because it does not receive any appropriated funds.

### **III. History and Major Events**

**Provide a timeline of your agency's history and key events, including:**

- **the date your agency was established;**
  - **the original purpose and responsibilities of your agency;**
  - **major changes in responsibilities or statutory authority;**
  - **changes to your policymaking body's name or composition;**
  - **significant changes in state/federal legislation, mandates, or funding;**
  - **significant state/federal litigation that specifically affects your agency's operations; and**
  - **key changes in your agency's organization (e.g., a major reorganization of the agency's divisions or program areas).**
- A. The responsibility for regulation of the practice of law has been recognized as a judicial function since 1846.
  - B. From 1846 until 1903, admission to practice law at the local level was the responsibility of the various district courts. The Supreme Court of Texas was responsible during this period for admission to practice law at the appellate level.
  - C. In 1903, the Supreme Court began centralizing the admissions process by creating a Board of Law Examiners under each of the five existing courts of appeals.
  - D. In 1919, the 39<sup>th</sup> Legislature created a five (5) member Board of Law Examiners to govern the admission of attorneys to practice law in Texas, under the jurisdiction of the Supreme Court, which has maintained statewide jurisdiction over the issuance of law licenses since that time. Within the 1919 statute, the Board was required to give examinations when as many as five (5) candidates requested that an examination be scheduled, for an examination fee of \$20.00. Graduates of law schools approved by the Supreme Court were granted a diploma privilege, meaning that they were not required to pass the bar examination to obtain a license. Those law school graduates were nevertheless required to satisfy the requirement of possessing good moral character.
  - E. The 1919 statute also provided for the Supreme Court, through the Board of Law Examiners, to have centralized control over the determination of the moral character of Applicants to the bar. Each Applicant was required to present certificates from three attorneys practicing in the Applicant's county, attesting to the Applicant's "character and standing," and containing a recommendation that the Applicant be admitted to the bar examination. The Board also had authority under statute and under Supreme Court rules to use other means to fairly investigate Applicants. The overriding effect of the 1919 legislation was to establish in the Supreme Court the sole power to regulate the Texas Bar; only the Supreme Court could issue a license to practice law in Texas or issue rules governing admission to the Bar of Texas. The

Supreme Court has maintained these powers and responsibilities continuously since 1919.

- F. In the 1930s, the Supreme Court adopted more stringent admission requirements. Some of these included: the necessity of meeting specific educational requirements; the requirement that Applicants file a Declaration of Intention to Study Law approximately two years before presentation for examination; and the adoption of standards for law office study, which required the submission of proof from a local district judge certifying that the Applicant was indeed pursuing his or her studies in a law office.
- G. In 1935, the diploma privilege was abolished. Graduates of all law schools have since been required to pass an examination prior to admission to the Bar of Texas.
- H. In 1945, the Supreme Court first adopted the precursor of the current rule providing that any graduate of an ABA-approved law school would be considered to have met the law study requirement to be eligible for admission to the Texas Bar Examination.
- I. In 1956, the Supreme Court adopted new rules providing that Applicants could take the Texas Bar Examination a maximum of five times but giving the Board the discretion to allow “worthy Applicants” to take the exam more than five times. The five-time maximum rule has been in effect since that time, although the Board did allow, by policy, waiver of the rule up to a maximum of eight attempts for several years and currently allows waiver of the rule to permit additional attempts “for good cause shown.”
- J. From 1974 through 1979, the Supreme Court delegated the responsibility for investigation of persons who filed a Declaration of Intention to Study Law to the State Bar of Texas, which performed this task with the help of district committees. Throughout all administrative changes related to character and fitness determinations, the Board of Law Examiners maintained its authority to administer the bar examination.
- K. In 1974, a nationally standardized test, the Multistate Bar Examination, was adopted by the Supreme Court as an integral part of the Texas Bar Examination.
- L. In 1979, the Supreme Court removed all responsibility for admissions from the State Bar’s Standards of Admission Committee and delegated the responsibility for determining present good moral character and fitness to the Board of Law Examiners.
- M. In 1981, law office study as a means of gaining admission to the Texas Bar Examination was abolished.
- N. In 1983, the Texas Bar Examination saw the addition of a half-day session of testing on civil and criminal procedure and evidence.
- O. In 1984, the Board began requiring all Applicants for a Texas law license to pass the Multistate Professional Responsibility Examination.
- P. The Board added to the Texas Bar Examination a second nationally standardized test, the Multistate Performance Test, beginning with the February 1998 examination.
- Q. In 1998, the Board launched its website. By 1999, the website was enhanced to include downloadable forms and to contain all rules, statutes, and other useful information pertinent to all aspects of the Board’s work.
- R. In 2001, the Board launched its Application for Admission to take the Texas Bar Examination on diskette, after conducting a survey to determine filing preferences

- among Applicants.
- S. In 2002, the Supreme Court amended the Rules Governing Admission to the Bar of Texas, providing for closed hearings on Character and Fitness determinations and confidentiality of all investigative materials.
  - T. The Legislature passed S.B. 266, in 2003, following Sunset Review of the Board. The bill continued the Board for 12 years; provided for staggered Board member terms of six years; confirmed confidentiality of Board hearings and records; provided for late filing of applications for the Bar Exam upon payment of a late fee and demonstration of good cause or hardship or for Applicants who fail the preceding exam; made probationary status of a licensee public information; eliminated exemption from law study requirements for certain legislators; eliminated the role of district committees; required reporting of exam statistics and results to law schools; closed to the public Board deliberations, hearings, and determinations relating to requests for testing accommodations; made records related to request for accommodations confidential; required the Board to define “chemical dependency;” and adopted various standard Sunset provisions.
  - U. The Supreme Court adopted new rules to implement S.B. 266 by orders dated August 29, 2003 and July 8, 2003.
  - V. Government Code section 82.0361 became effective September 1, 2003, requiring a nonresident attorney requesting permission to participate in proceedings in a Texas court to pay a fee of \$250 collected by the Board of Law Examiners, and requiring the Board to remit these fees to the Comptroller for deposit in the basic civil legal services account of the judicial fund for use in programs approved by the Supreme Court that provide basic civil legal services to the indigent. Pursuant to this new statutory requirement, the Supreme Court adopted Rule XIX.
  - W. In 2004, as required by S.B. 266, the Board began collecting demographic data from exam Applicants. The Board commissioned a psychometric analysis using this data and a report analyzing the cause of bar exam failure. The reported included data on bar passage rates according to the gender, ethnicity and race of Applicants.
  - X. A psychometric audit of the Texas Bar Exam was performed in 2008.
  - Y. A 2014 psychometric audit of the Texas Bar Exam concluded that the 2013 exam was scored according to best practices and the reliability of the test was very high.
  - Z. On October 1, 2014 the Supreme Court amended Rules XIII and XIV to allow more foreign trained Applicants to become eligible to take the Texas Bar Exam and to obtain Foreign Legal Consultant certificates.
  - AA. In May, 2015 the Board established an account with Texas.gov, enabling it to receive online fee payment.
  - BB. In June 2015, the Board began receiving online payment of non-resident attorney fees payable under Government Code §82.0361.
  - CC. In July 2015, the Supreme Court amended Rule XIX of the Rules Governing Admission to the Bar of Texas to eliminate the “mailbox rule”.

## IV. Policymaking Structure

- A. Complete the following chart providing information on your policymaking body members.

**Texas Board of Law Examiners  
Exhibit 3: Policymaking Body**

Member Name	Term Appt	Qualification	City
Sandra Zamora, Chair	6/9/08 - 8/31/19	Attorney	Dallas
Harold A. "Al" Odom, Vice Chair	9/1/09 - 8/31/15 9/1/15 - 8/31/21	Attorney	Houston
John Simpson *	9/24/03 - 8/31/15	Attorney	Lubbock
H. Michael Sokolow *	12/1/06 - 8/31/15	Attorney	Houston
Augustin "Augie" Rivera, Jr.	9/1/11 - 8/31/17	Attorney	Corpus Christi
Teresa Ereon Giltner	9/1/11 - 8/31/17	Attorney	Dallas
Laura R. Swann	9/1/11 - 8/31/17	Attorney	Waco
John H. Cayce, Jr.	9/1/13 - 8/31/19	Attorney	Fort Worth
Barbara Ellis	9/1/14 - 8/31/19	Attorney	Austin
Anna M. McKim**	9/1/15 - 8/31/21	Attorney	Lubbock
Cynthia Hujar Orr**	9/1/15 - 8/31/21	Attorney	San Antonio

\*Term expires August 31, 2015.

\*\* Term begins September 1, 2015.

**B. Describe the primary role and responsibilities of your policymaking body.** The Texas Board of Law Examiners is an agency of the Texas Supreme Court. The Board's sole purpose is to qualify Applicants for admission to the State Bar of Texas. The Supreme Court is ultimately responsible for admitting those Applicants certified by the Board as eligible for admission to the State Bar of Texas. In performing its duties, the Board administers and interprets the *Rules Governing Admission to the Bar of Texas*, promulgated by the Supreme Court. The State Bar of Texas licenses and disciplines its members, independent of the Board's work.

Nine Texas lawyers serve as members of the Board. They are appointed by the Supreme Court to serve staggered six year terms. Each member must be a U.S. citizen, licensed to practice law in

Texas, over the age of 35, and have been a practicing lawyer or judge of a court of record for a combined total of at least ten years.

The Board staff investigates the background of every Bar Applicant. [However, it does not investigate the background of Applicants for reinstatement, following their disbarment.] The process begins with investigation of all first year students in ABA-approved Texas law schools who intend to apply for admission after graduation. When Texas law students later apply for admission, the Board updates its investigation as the final step in certification of their character and fitness. Applicants for admission from other states and foreign countries are also investigated before being certified by the Board as eligible for admission. The investigation focuses on conduct indicating whether the Applicant may have certain character traits or any currently existing mental or emotional condition likely to cause injury to a client, obstruct the administration of justice, or violate the *Texas Disciplinary Rules of Professional Conduct* if licensed to practice law.

The Board finally determines whether each Applicant for admission has the good moral character and present fitness to practice law. In some cases, the Board may conduct a hearing to consider evidence offered by the Board staff and the Applicant that is relevant to an Applicant's moral character and present fitness. After consideration of the evidence and argument presented at the hearing, the Board issues a written order either certifying the Applicant for admission, conditionally certifying, or declining to certify and stating its findings of fact and conclusions of law in support of that decision. The Board's character and fitness investigations, hearings, and orders are confidential by statute.

In addition to evaluating the character and fitness of Bar Applicants, the Board is responsible for administration of the Texas Bar Exam as prescribed by Rule XI of the *Rules Governing Admission to the Bar of Texas*. The bar exam is administered semi-annually over two and one-half days, beginning on the Tuesday before the last Wednesday of the months of February and July. Members of the Board draft the Texas Essay and Texas Procedure and Evidence portions of the exam and are responsible for grading answers to those portions as well as the Multistate Performance Test.

The Board's business meetings and final decisions in character and fitness hearings are conducted in open sessions with public notice under the Texas Open Meetings Act. Board records are subject to the Public Information Act, except where confidentiality is required by statute or order of the Supreme Court. At every public meeting of the Board, time is allotted for interested persons to address the Board on matters of public interest and concern.

**C. How is the chair selected?** The Board currently elects its chair from its membership if the Court does not appoint the chair, according to Supreme Court Rule.

**D. List any special circumstances or unique features about your policymaking body or its responsibilities.** Board duties are unusually comprehensive and varied. Many time-consuming and unique responsibilities requiring legal expertise are related to the semi-annual Texas Bar Examination. Pre-examination duties of each Board member include researching and drafting two proposed and two alternate bar examination questions for an assigned subject (subject assignments generally rotate every few years), as well as grading guidelines for all four questions. This question drafting process occurs twice annually, in preparation for the February and the July bar examinations. In addition, each member must participate in the review, evaluation, critique,

and revision of all proposed questions. Examination administration duties also include attending and assisting in the administration of the two-and-one-half day bar exam each February and July at an assigned exam site in one of six Texas cities. Other duties related to the bar examination include hiring, training, and supervising two licensed attorney graders to assure that grading is done in a uniform, fair, and timely manner. Each board member is personally responsible for grading approximately one hundred (100) examinee answers to use in calibration sessions with graders and must meet or communicate with graders periodically during the grading process to ascertain that graders are still in calibration with the member's expectations of an acceptable answer. Board members must report grades and re-grades to Board staff, and must personally re-grade the answers of examinees whose grades fall within a designated re-grade bracket, all within a specified time frame. In 2015, over four thousand (4,000) examinations will be graded, the majority of which are graded between August 1 and late October in connection with the July bar exam. After each semiannual grade release, Board members conduct written or telephonic informal reviews and in-person formal reviews of performance for Applicants who fail the exam, when requested, and as required by Rule XI.

Other Board member duties include: attending and participating in four to six board meetings per year; serving on approximately eight monthly character and fitness hearing panels per year; and participating in periodic Board-sponsored long-range planning meetings and seminars, as well as workshops, seminars, and meetings relating to the bar admissions and bar examination process often sponsored by the National Conference of Bar Examiners.

**E. In general, how often does your policymaking body meet? How many times did it meet in FY 2014? In FY 2015?**

The complete Board meets as many as six times annually to adopt policy, interpret rules, consider budgetary matters, review and approve questions for the bar examination, and conduct in-person reviews of the examinations of certain eligible Applicants who failed the exam on two or more occasions. In addition, panels of three Board members meet monthly to consider character and fitness issues in closed hearings and requests for rule waivers in open session. There are approximately twenty character and fitness hearings panels per year with each Board member serving on approximately eight panels during the year.

During Fiscal Year 2014, the complete Board met on four (4) occasions: November 2013, January 2014, April 2014 and June 2014. In the same year, 22 hearing panels were convened, composed of three (3) Board members each. Additionally, three Accommodation Review Committee meetings were held in Fiscal Year 2014.

The Board's calendar for Fiscal Year 2015 reflects four (4) meetings of the complete Board: November, 2014 and January, April and June, 2015. In the same year, sixteen hearings panels were convened, composed of three (3) Board members each. One Accommodation Review Committee meetings was held in Fiscal Year 2015. The Board is scheduled to meet again in September and November 2015.

**F. What type of training do members of your agency's policymaking body receive?**

New Board members receive a thorough orientation, presented by the Chair, one other Board member, and senior staff. All Board members also receive the training required by the Public Funds Investment Act. In addition, most Board members receive training related to the bar admissions and bar examination process through educational programs conducted by the National Conference of Bar Examiners. Board members receive formal training necessary to ensure they have a good command of open government laws. This training is designed to assist Board members in complying with the open government training requirement and Texas open government laws.

**G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.**

*The Supreme Court Rules Governing Admission to the Bar of Texas*

The Board's role in running the agency includes selection and oversight of the Executive Director, approval of the Board budget, and oversight of Board administration, including administration of the Texas Bar Exam. Acting under the Rules promulgated by the Supreme Court, the Board determines the eligibility of candidates for examination, holds hearings on character and fitness issues, prepares and supervises the bar examinations, and determines whether attorneys from other states meet the admission requirements. When a candidate has met all requirements for admission, the Board recommends the candidate to the Court for licensing. Only the Supreme Court of Texas can issue a license to practice law in this State.

The following are the responsibilities of Board staff in running the agency and essential duties of each position:

1. Executive Director
  - a. Chief administrative office of the Board Of Law Examiners;
  - b. Responsible for the organization, operation, and supervision of the Board's activities as guided by the Board's enabling statutes, *Rules Governing Admission to the Bar of Texas*, and the policies and goals established by the Board;
  - c. Hired by and serves at the pleasure of the Board;
  - d. General duties include:
    - 1) Providing assistance to the Chair and the members of the Board, as needed;
    - 2) Overseeing all office operations, personnel, financial management, budget control, and compliance with statutory requirements;
    - 3) Interfacing with the Supreme Court Liaison and staff regarding Board matters;
    - 4) Representing the Board in all dealings with other state agencies, including statutory reporting;
    - 5) Communicating and coordinating with approved Texas law schools concerning the Board's processes, as they relate to law students and

- as to implementation of Board policies and Supreme Court rule changes;
- 6) Speaking at Texas law schools about BLE filing requirements;
  - 7) Communicating with representatives of the State Bar, Office of the General Counsel, Unauthorized Practice of Law Committee, and such other sections and divisions of the State Bar as may be affected by or interested in Board policies;
  - 8) Responding to requests for information from elected officials, the public, and members of the media; and
  - 9) Keeping the Board informed of legislation which may affect its functions and responsibilities.
2. Other Employees working under the direction and control (either directly or indirectly) of the Executive Director:
- a. The Director of Character and Fitness, who is responsible for overseeing and recommending policy decisions on the certification of the character and fitness of Declarants and Applicants;
  - b. The Director of Eligibility and Examination, who is responsible for overseeing the administration of all bar examinations and for overseeing and recommending decisions on the eligibility of Applicants to be recommended for licensure;
  - c. A Senior Staff Attorney, who is responsible for preparing and presenting contested character and fitness cases to the Board and for serving as legal counsel to the Executive Director and the Board;
  - d. A Staff Attorney, who assists in preparing and presenting contested character and fitness cases to the Board and who oversees all cases involving requests for testing accommodations for Applicants with disabilities;
  - e. The Executive Assistant to the Executive Director, who is the office manager responsible for all matters relating to personnel and employee benefits, responsible for handling financial matters of BLE, including budget and reimbursements, and providing assistance and support to the Executive Director and Board members;
  - f. The Assistant Director of Character and Fitness, who supervises all Probationary Licensees, assists the Staff Attorneys with docket management responsibilities, and is responsible for the intermediate supervision of the character and fitness investigations conducted by the Licensure Analysts;
  - g. The Assistant Director of Eligibility and Examination, who is responsible for the intermediate supervision of the examination and eligibility functions of the Licensure Analyst; and is responsible for oversight of the Board's information systems;

- h. A number of Licensure Analysts, each of whom is responsible for handling and processing declaration and application files; conducting the character and fitness and eligibility investigations of persons whose names fall within a particular segment of the alphabet; and carrying out other specifically assigned duties relating to administration of the bar exam;
- i. Administrative Assistant/Purchasing Tech who is responsible for inventory and purchase functions; handling mail, running daily fee reports, coordinating proctor hiring for the bar exam; and providing assistance to the Executive Assistant when needed;
- k. Administrative Assistant responsible for greeting visitors, accepting deliveries, answering the telephone, handling application copy requests, archiving files; assisting with the agency's Records Retention Schedule; and providing support work where needed;
- l. A part-time Reproduction Equipment Operator, who is responsible for printing BLE forms, booklets, examinations, and performing related duties. (This position was eliminated effective August 31, 2015.)

**H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?** Staff provides reports on: finances, probationary licenses, exam administration, grading, and litigation (if any) at each Board meeting. In addition, information on current events related to the bar admission process is provided as part of each Board meeting.

**I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?**

Board staff and Board members meet with Deans of Law Schools twice a year. Each Board meeting agenda includes discussion of written complaints received by mail and email and also includes a public comment session.

Board members conduct reviews of examination performance for Applicants who fail to achieve a passing score on the exam, either in person, in writing or by telephone, after each grade release.

Board staff provides orientation sessions for first year law students to explain the steps to achieving Supreme Court approval for admission to the Bar, and answers questions by students and law school staff about the bar admission process and requirements. The Board continually reviews its procedures for examination and admissions to achieve technological improvements, increased efficiency and examination fairness and integrity.

**J. Texas Board of Law Examiners**

**Exhibit 4: Subcommittees and Advisory Committees**

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Finance Committee	5-Chair, Vice Chair and 3 Board Members.	Committee assists Board in fulfilling responsibilities with respect to internal controls over financial reporting, integrity and transparency of the Board’s financial statements; the Board’s compliance with legal, regulatory and reporting requirements, particularly those related to the Public Funds Investment Act, Board policies related to financial aspects of risk assessment and risk management, the Independent Auditor’s qualifications and independence, and the performance of the Independent Auditors.	Supreme Court Rule XX(h) and (8) Government Code §82.034.
Accommodation Review Committee	3 - Chair, Vice Chair and Board Member at Large	Members of the ARC review Applicant appeals of testing accommodation determinations.	Supreme Court Rule XII and XX (g).

**V. Funding**

**A. Provide a brief description of your agency’s funding.**

Fees charged for examinations and investigations of Applicants, including late fees and application fees, set by the Texas Supreme Court, are the primary source of funding. A small amount of interest income paid on cash reserves is also received.

**B. List all riders that significantly impact your agency’s budget.**

Not applicable, because the Board does not receive appropriated funds.

**C. Show your agency’s expenditures by strategy.**

**Board of Law Examiners  
Exhibit 5: Expenditures by Strategy — 2014 (Actual)**

The Board of Law Examiners does not have Expenditures by Strategy established by the Legislature because it does not receive any appropriated funds.

**D. Show your agency’s sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.**

**Board of Law Examiners  
Exhibit 6: Sources of Revenue — Fiscal Year 2014 (Actual)**

Source	Amount
Fee Revenue	\$3,258,894
Investment & Interest Income	\$ 4,402
<b>TOTAL</b>	<b>\$3,263,296</b>

**E. If you receive funds from multiple federal programs, show the types of federal funding sources.**

**Board of Law Examiners  
Exhibit 7: Federal Funds — Fiscal Year 2014**

Not applicable.

**F. If applicable, provide detailed information on fees collected by your agency.**

**Board of Law Examiners  
Exhibit 8: Fee Revenue — Fiscal Year 2014**

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited <i>(e.g., General Revenue Fund)</i>
<b>Fingerprint Card Processing Fee</b>	40/150	4336	173,440.00	Special Revenue Fund
<b>Application Investigation Fees</b>	150/150	3598	539,700.00	Special Revenue Fund
<b>Declaration Investigation Fees</b>	150/150	2112	316,800.00	Special Revenue Fund

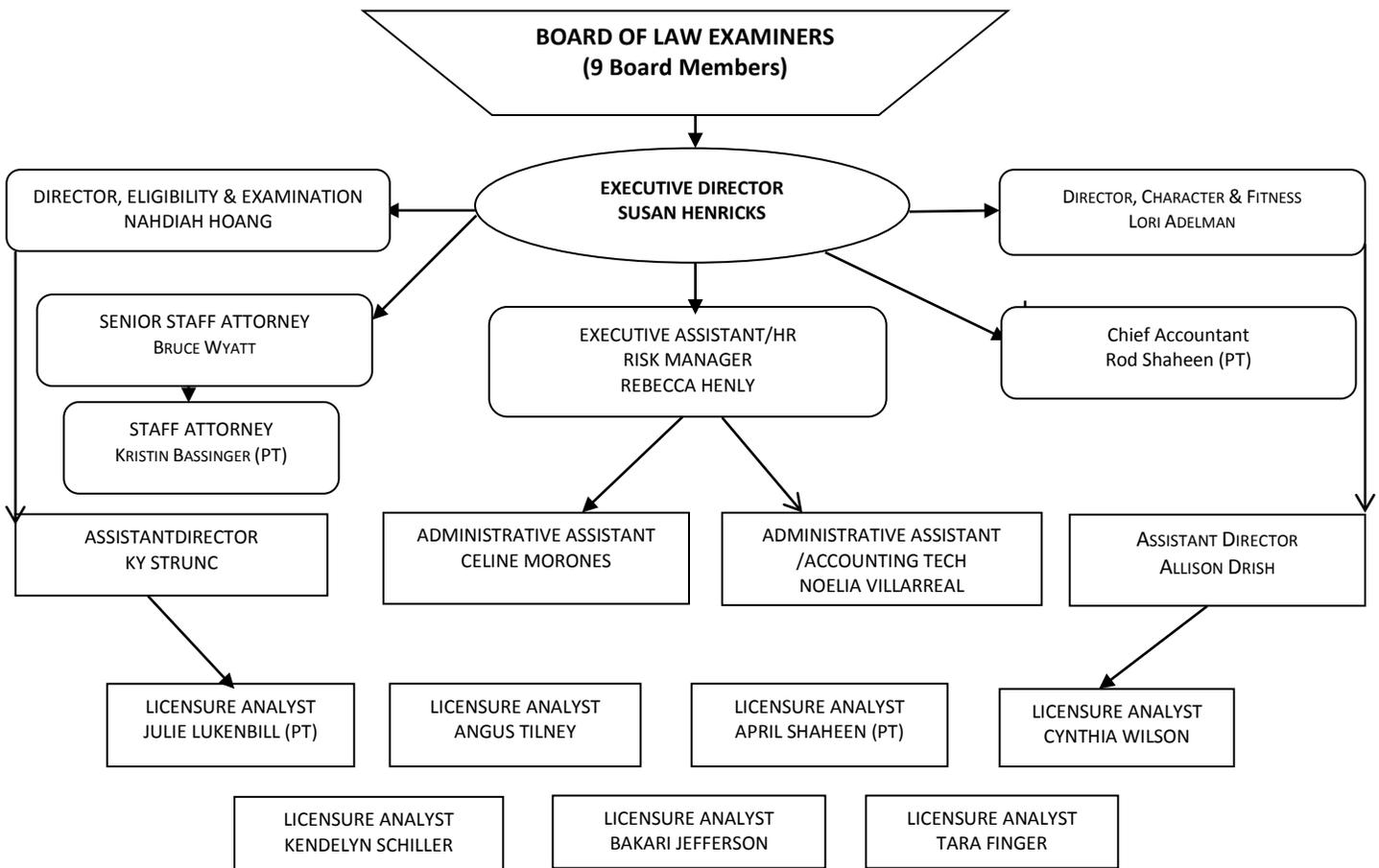
<b>Fee Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory Maximum</b>	<b>Number of Persons or Entities Paying Fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
<b>Supplemental Investigation Fees</b>	150/150	31	4,650.00	Special Revenue Fund
<b>Declaration Late Filing Fees</b>	150/150	715	107,250.00	Special Revenue Fund
<b>Fee for Check Returned for Insufficient Funds Declarations</b>	25/150	4	100.00	Special Revenue Fund
<b>Laptop Examination Fees</b>	50/150	3866	193,300.00	Special Revenue Fund
<b>Application Deposit Fees</b>	30/150	4	120.00	Special Revenue Fund
<b>Incompleteness Fees</b>	75/150	18	1,350.00	Special Revenue Fund
<b>Application Fees Foreign Attorney</b>	700/700	382	267,720.00	Special Revenue Fund
<b>Application Fees Instate</b>	150/150	2012	301,830.74	Special Revenue Fund
<b>Application Fees Out of State</b>	150/150	1002	150,270.00	Special Revenue Fund
<b>Examination Fees</b>	95/150	4847	460,425.00	Special Revenue Fund
<b>Re-application Fee</b>	150/150	1220	182,970.00	Special Revenue Fund
<b>Attorney Reinstatement</b>	150/150	4	600.00	Special Revenue Fund
<b>Foreign Nation Inquiry Fees</b>	100/150	13	1,300.00	Special Revenue Fund

<b>Fee Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory Maximum</b>	<b>Number of Persons or Entities Paying Fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
Foreign Legal Consultant Renewal Fees	150/150	18	2,700.00	Special Revenue Fund
Foreign Legal Consultant Fees	700/700	8	5,600.00	Special Revenue Fund
Foreign Nation Inquiry Fees [non-refunded balance only]	100/150	13	1,300.00	Special Revenue Fund
Application Late Filing Fees	150/150	1235	185,305.00	Special Revenue Fund
Fee for Check Returned for Insufficient Funds Applications	25/150	25	625.00	Special Revenue Fund
Attorneys Without Exam Application Fees	700/700	505	353,845.00	Special Revenue Fund
Administrative Service Fees-MBE Transfer	25/150	89	2,220.00	Special Revenue Fund
Mail Lists, Labels	35	38	1,325.00	Special Revenue Fund
Copy Fees-Open Records			1,260.09	Special Revenue Fund
Other Miscellaneous			4,188.28	Special Revenue Fund

## **VI. Organization**

- A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, Department Heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.**

**BOARD OF LAW EXAMINERS -- AGENCY ORGANIZATION**  
 EACH POSITION IS FILLED BY ONE FULL-TIME EMPLOYEE EXCEPT AS INDICATED



**B. Board of Law Examiners**  
**Exhibit 9: FTEs by Location — Fiscal Year 2014**

Headquarters, Region, or Field Office	Location	Co-Location? Yes / No	Number of Budgeted FTEs FY 2014	Number of Actual FTEs as of June 1, 2014
Main Office	205 West 14 <sup>th</sup> Street Suite 500, Austin, TX	No	18.5	17.5
			<b>TOTAL: 18.5</b>	<b>TOTAL: 17.5</b>

**C. What are your agency’s FTE caps for fiscal years 2014–2017?**

Not applicable because the Board does not receive appropriated funds.

**D. How many temporary or contract employees did your agency have as of August 31, 2014?**

None.

- E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.

**Board of Law Examiners**  
**Exhibit 10: List of Program FTEs and Expenditures — Fiscal Year 2014**

Program	Number of Budgeted FTEs FY 2014	Actual FTEs as of August 31, 2014	Actual Expenditures
Administration	5.5	4.5	557,143.00
Character & Fitness	7.75	7.75	861,479.00
Eligibility & Examination	5.25	5.25	1,743,622.00
<b>TOTAL</b>	<b>18.5</b>	<b>17.5</b>	<b>3,162,244.00</b>

## VII. Guide to Agency Programs

### A. Name of Program or Function: Administration

*Location/Division: Administration*

*Contact Name: Susan Henricks, Executive Director*

*Actual Expenditures, FY 2014: \$557,143.00*

*Number of Actual FTEs as of June 1, 2015: 4.5*

*Statutory Citation for Program: Government Code Sec. 82.004, 82.007, 82.0071, 82.0072, 82.0073, 82.009, 82.010, 82.011, 82.013 and 82.0361*

- B. What is the objective of this program or function? Describe the major activities performed under this program.

The purpose of this program is to provide support to the Board members and the two additional divisions of the Board, Character & Fitness and Eligibility & Examination. Executive, legal, accounting, personnel, data processing, and printing functions are under the supervision of the Executive Director. The Executive Director reports directly to the Board and is responsible for overseeing all of the Board's operations. The Executive Director also keeps the Supreme Court Justice, appointed as Liaison to the Board, informed of the Board's activities.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

As required by Government Code Sec. 82.033 and 82.034, all fees collected by the Board are utilized to administer its functions as directed by the Supreme Court. No State general revenue funds are necessary to operate the Board.

- D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

None

- E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

This program has no function or effect independent of other agency programs.

- F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

The Executive Director administers this program. No field or regional services are covered.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Not applicable.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

None.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Not applicable.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

Not applicable.

- K. If contracted expenditures are made through this program please provide:
- **a short summary of the general purpose of those contracts overall;** IT support and computer programming, website maintenance.
  - **the amount of those expenditures in fiscal year 2014;** \$23,079.90
  - **the number of contracts accounting for those expenditures;** One
  - **top five contracts by dollar amount, including contractor and purpose;** Darrell Eichman - \$23,079.90
  - **the methods used to ensure accountability for funding and performance; and** Detailed itemized billing reviewed by Assistant Director of Eligibility and Examination and Executive Director
  - **a short description of any current contracting problems.** None
- L. **Provide information on any grants awarded by the program.**
- Not applicable.
- M. **What statutory changes could be made to assist this program in performing its functions? Explain.**
- None other than those identified in Section IX. Major Issues.
- N. **Provide any additional information needed to gain a preliminary understanding of the program or function.**
- None
- O. **Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- **why the regulation is needed;**
  - **the scope of, and procedures for, inspections or audits of regulated entities;**
  - **follow-up activities conducted when non-compliance is identified;**
  - **sanctions available to the agency to ensure compliance; and**
  - **procedures for handling consumer/public complaints against regulated entities.**

The Board does not license or regulate any person or entity, but does certify Applicants to the Supreme Court as eligible for licensure. The Board has no jurisdiction over fully-licensed lawyers and does not process or accept complaints against anyone.

**VII. B. Name of Program or Function: Character and Fitness**

**A. Location/Division:** Character and Fitness

**Contact Name:** Lori S. Adelman, Division Director

**Actual Expenditures, FY 2014:** \$861,479.00

**Number of Actual FTEs as of June 1, 2015:** 7.75

**Statutory Citation for Program:** Government Code §82.004 Board Duties and §82.028 Moral Character and Fitness of Applicant

(b) The board shall examine each eligible candidate as to the candidate’s qualifications to practice law.

(c) The board may not recommend any person for a license to practice law unless the person has shown to the board, in the manner prescribed by the Supreme Court, that the person is of the moral character and of the capacity and attainment proper for that person to be licensed.

§82.028 (a) the Board of Law Examiners may conduct an investigation of the moral character and fitness of each Applicant for a license.

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

To ensure satisfaction of the requirements, set out both in statute and the *Rules Governing Admission to the Bar of Texas*, for determining the good moral character and fitness of Declarants and Applicants to the Texas Bar. The board investigates the character and fitness of Declarants (law students attending an ABA approved law school in Texas) and Applicants for Admission to the Bar of Texas. There are four distinct areas within the character and fitness process: the investigation, which all Declarants and Applicants submit to, issuing a Preliminary Determination Letter (if necessary), a hearing (if necessary), and actions after a hearing if a person is put on a probationary license or a person is denied certification for admission (if necessary). A flow chart of these phases is also attached.

Investigation

Board staff has a statutorily mandated amount of time to complete a character and fitness investigation for each Declaration or Application received. The Board is allowed 270 days to investigate Declarations and 150 days to investigate Applications pursuant to Supreme Court Rules VIII and X. Once a Declaration or Application form is received the investigation process is as follows:

### Initial Investigation

1. Analyst screens the form for any potential areas of concern based on the person's responses.
2. Analyst sends out letters to third parties (schools, employers, references) and screens responses for any potential areas of concern.
3. Analyst receives Criminal History Record Information, from the Texas Department of Public Safety and FBI, and checks that it is consistent with information already received.
4. If there are no concerns, or only minor concerns, the Analyst is authorized to complete the investigation and certify the person's good moral character and fitness.
5. If concerns develop, the Analyst summarizes the issues and routes the file to the division's Director or Assistant Director for guidance.
6. By the end of the investigation period, the areas of concern have either been resolved such that the person's character and fitness may be certified, or a negative Preliminary Determination Letter (PDL) is issued.

### Issuance of a Preliminary Determination Letter

7. If a PDL is issued, it must state the specific reasons why it appears the Declarant or Applicant does not meet the requirement for good moral character and fitness, list any potential curative measures the person may take, and direct the person to reserve his or her right to a hearing within 30 days. Additionally, if the PDL states a finding that the person may suffer from chemical dependency, information is provided on how to request a chemical dependency evaluation at a treatment facility approved by the Board.
8. The Director or Assistant Director prepares a draft PDL. The file is assigned to one of the two staff attorneys. The assigned attorney reviews and provides comments, which are incorporated into the PDL, and then the PDL is sent to the Declarant or Applicant by certified and first class mail.
9. Once a person receives a PDL, there are three options:
  - a. Request a hearing in writing. Once requested, the Staff Attorney assigned to the file will determine if the file is "ready" for a hearing; then, will set the matter for a hearing before a three-member panel of the Board as his or her docket allows;
  - b. Request a hearing in writing and provide proof of taking curative measures. The staff will review any curative information provided and determine whether the

information provided is sufficient to “cure” any of the matters raised in the PDL. If so, either part or the entire PDL may be dismissed; or

- c. Request a hearing in writing and request consideration of an Agreed Order to be presented to a Board panel in lieu of a hearing.

### Hearings

10. The Board conducts hearings one day a month in eleven months of the year. Hearings are governed by the *Rules Governing Admission to the Bar of Texas*, are confidential, and are closed to the public, unless the Declarant or Applicants requests a limited open hearing for specifically identified people to attend or an entirely open hearing. A court reporter is present and records the proceedings of each hearing.
11. Three Board members are chosen to serve as panel members on a schedule determined by the Executive Director and Board Chairperson so that each Board member is assigned to approximately the same number of panels each year. Often, two hearing panels may be conducted simultaneously. For each panel, one of the panel members is designated the panel chair, who oversees the day’s hearings and signs any orders that are issued.
12. One of the two staff attorneys presents the case on behalf of the Board staff. Each staff attorney sets his or her own docket. The person having a hearing may appear with or without counsel, as they choose.
13. Hearings consist of offer of exhibits, opening statements, direct and cross-examination of witnesses, and closing statements. Panel members may ask additional questions of witnesses.
14. Following the hearings, panel members go into executive session for the purpose of deliberations. Panel members then vote and decisions are announced in open session, by docket number only. The staff attorney is responsible for notifying the other party, if they are not present for the announcement. The staff attorney drafts an order, including findings of fact and conclusions of law with citations to the record, to be reviewed by the panel members. Panel members make modifications and additions as agreed and a final version is sent to the panel chair for signature. Once the panel chair signs the order, the staff attorney forwards a copy to the Declarant or Applicant, or his or her attorney.
15. There are three outcomes from a panel hearing:
  - a. Approval. If the panel approves certification of the person’s character and fitness, assuming all other requirements have been met, the person is eligible to be licensed, subject to satisfaction of other requirements.

- b. Denial. If the panel finds the person does not meet the character and fitness requirements, an order is drafted which describes specific curative measures the person must complete prior to being allowed to file his or her Petition for Redetermination.
  - c. Approval subject to Conditions (probationary license). If the panel approves the person's character and fitness subject to conditions, an order recommending the person for a probationary license is issued. Once all other licensing requirements are met, a probationary license is issued. A probationary licensee is a licensed attorney who is required to comply with specified conditions, which vary with each order. Upon successful completion of the probationary term, the person may apply to have his or her probationary license converted to a regular license.
16. Declarants and Applicants have the right to appeal a panel decision regarding their character and fitness to the district courts of Travis County within 60 days after the written order is mailed to the affected person pursuant to either Supreme Court Rule XV(k) or Government Code §82.038. The standard for judicial review of the Board's order is whether the Board's decision is reasonably supported by substantial evidence. The court can either affirm the Board's action or remand the matter to the Board for further proceedings.

#### After a Hearing

- 17. Persons practicing pursuant to a probationary license are subject to the jurisdiction of both the Board of Law Examiners and the State Bar of Texas.
- 18. During the term of the probationary license, at a minimum, the person must submit regular reports (periodic questionnaires) to the Board on a form provided by the Board.
- 19. If there are no violations of the order during a probationary period, the person may apply to the Board to have his or her probationary license converted to a regular, unrestricted license. Unless specifically required, a second hearing before a Board Panel is not necessary.
- 20. If the staff finds evidence that a probationary licensee has violated any condition of the order, the Assistant Director will discuss the alleged violation(s) with the staff attorney assigned to the case. Together, they will decide if a non-compliance hearing should be set. If a hearing is held, Board members would determine whether the alleged violation(s) indicate that the Board should recommend to the Supreme Court that the license be revoked, modified or extended.

21. At the conclusion of a non-compliance hearing, the Panel may vote to extend and/or modify the terms of the probationary license, recommend that the Supreme Court revoke the probationary license, or take no action.
22. If an Applicant or Declarant receives an order denying certification of his or her good moral character or fitness, at the end of the denial period the person may file a Petition for Redetermination, along with a Supplemental Investigation Form, and any required fees. An investigation is then done to determine if the person complied with all of the curative measures in the order. If the person shows compliance with the order and a future hearing was not required by the order, the person's character and fitness may be approved without a second hearing. If compliance with the order is not shown, or if the order required a second hearing, the file is given to the Staff Attorney to set the matter for hearing. In a hearing for redetermination, after a denial, the burden of proof is on the person seeking certification.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.**

The Character and Fitness program meets its statutory deadlines for conducting investigations.

The Board has been involved in only three (3) appeals of character and fitness decisions in the last five (5) years, each of which was decided ultimately in favor of the Board. The last of these decisions was issued in 2012.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

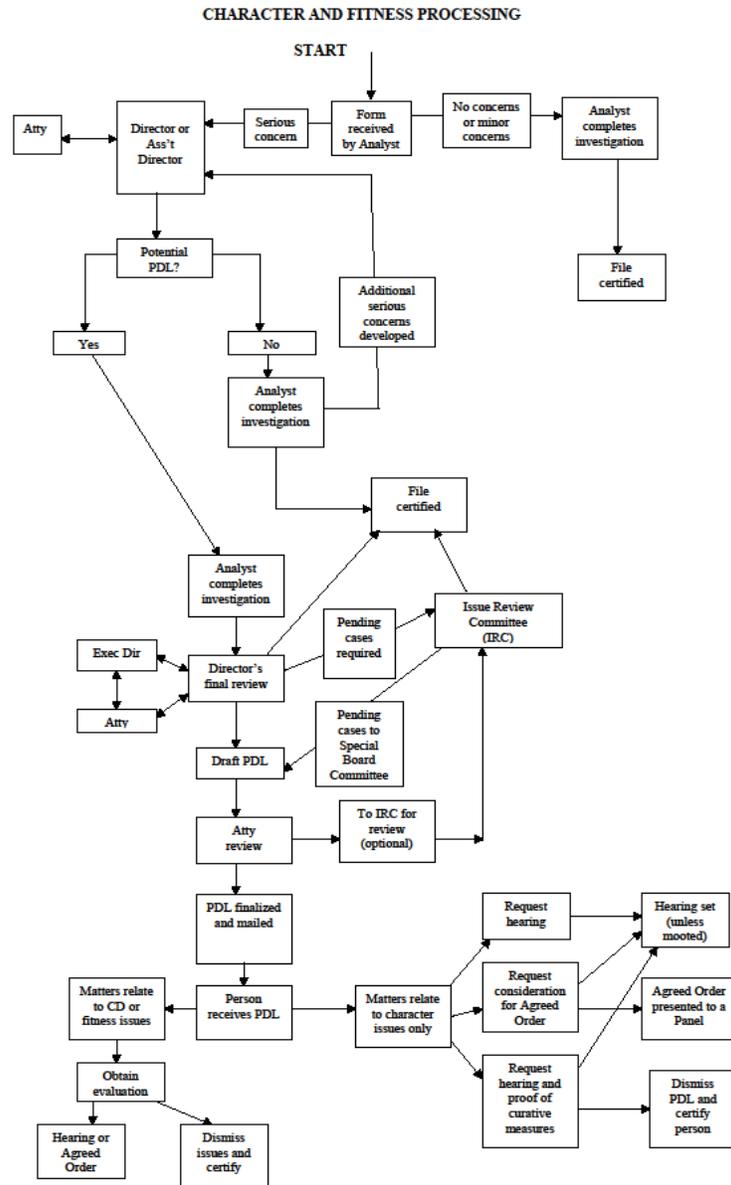
Based on the Board's last Sunset review in 2001, the hearings process was changed from one that was open to the public to one that is confidential. This change allowed for a better balancing of the Declarant or Applicant's right to keep the process confidential with the Board members' need to hear all relevant evidence in order to make a determination.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The Character and Fitness program impacts each Declarant and Applicant to the Bar; all are required to show the requisite character and fitness to be certified to the Supreme Court. During FY 2014, the Board received 2,085 Declarations of Intent to Study Law and 5,152 Applications to take the Texas Bar Exam. An investigation is conducted on every Declaration and Application submitted. In FY 2014, 75 hearings were conducted.

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures.**

Flowchart showing general character and fitness process.



**G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Character and Fitness program is funded entirely from the annual budget of the Board of Law Examiners, derived principally from fees generated from persons seeking or declaring intention to seek admission to the Bar of Texas.

**H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

The National Conference on Bar Examiners (NCBE) offers a paid investigative service that state Boards of Law Examiners, including Texas, could utilize to conduct a character and fitness investigation. Prior to 1993, the Board utilized this service to conduct 20% of its character and fitness investigations. The Board determined, however, that the Board staff could conduct a more thorough and uniform investigation if all investigations were done by staff. Use of NCBE investigation services would not eliminate all investigation functions performed by the Board staff. NCBE's comparable fees for investigation (\$250 - \$800) are more than twice the investigation fees charged by the Board (\$75 - \$150).

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Not applicable

**J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

We receive Criminal History Record Information (CHRI) from the Texas Department of Public Safety and the FBI through fingerprints provided by all Declarants and Applicants. The Board is subject to monitoring by both the DPS and the FBI to ensure we handle the CHRI according to their procedures.

**K. If contracted expenditures are made through this program please provide:**

- **a short summary of the general purpose of those contracts overall;**
  1. Expert consultation on written documentation received on fitness of Applicants with mental health issues
  2. Computer programming services to maintain data base, website and online communications with Applicants.
- **the amount of those expenditures in fiscal year 2014;**
  1. \$3,770.00
  2. \$23,079.90
- **the number of contracts accounting for those expenditures;** Three
- **top five contracts by dollar amount, including contractor and purpose;**  
Dr. Glass - \$1,700; Dr. Kawalksi - \$2,070; Darrell Eichman - \$23,079.90

- **the methods used to ensure accountability for funding and performance; and**
  1. Mental Health consultants - managed by Director of Character and Fitness directly. Review requested as needed by Director who reviews all reports and invoices. The Executive Director also approves all payments.
  2. Computer programming services - detailed itemized billing reviewed by Assistant Director of Eligibility and Examination and Executive Director.
- **a short description of any current contracting problems.** None

**L. Provide information on any grants awarded by the program.**

Not applicable

**M. What statutory changes could be made to assist this program in performing its functions? Explain.**

Several statutory changes that would assist this program are discussed in Section IX Major Issues.

In addition, the following change would be beneficial for clarification:

*Government Code 82.027(b)(4) has not been involved in civil litigation or bankruptcy proceedings that reasonably bear on the Applicant's fitness to practice law.*

The words "character or" should be inserted before "fitness to practice law."

**N. Provide any additional information needed to gain a preliminary understanding of the program or function.**

None

**O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

To the extent that this section has not been covered within prior answers, it is not applicable. The Board does not license any person, but does certify Applicants to the Supreme Court as eligible for licensure. The Board has no jurisdiction over fully licensed lawyers.

**P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

Not applicable.

**VII. C. Name of Program or Function: Eligibility and Examination**

**Contact Name: Nahdiah Hoang**

**Actual Expenditures, FY 2014: \$1,743,622.00**

**Number of Actual FTEs as of June 1, 2015: 5.5**

**Statutory Citations for Program:**

<b>Statutory Requirements pertaining to Eligibility &amp; Examination: Texas Government Code</b>	
82.004	Board of Law Examiners shall examine qualifications to practice law and determine the eligibility of candidates for examination
82.004(c)	Board may not recommend licensure unless the Applicant has shown, as prescribed by the Supreme Court, the proper capacity and attainment
82.009	Board is to prepare and maintain a written plan to provide people with disabilities reasonable access to its programs
82.021	Only the Supreme Court of Texas may issue law licenses in Texas
82.022	Supreme Court may adopt rules on eligibility
82.024	Law study requirement for taking examination
82.0241	Supreme Court jurisdiction as to graduates of unaccredited schools
82.027	Requirements for composition and use of Application for Admission as an investigative tool for the Board
82.0271	Residency or citizenship status of Applicant does not bar admission to exam
82.033(b)	Fees
82.036	Supreme Court jurisdiction as to admission of foreign attorneys

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The objective is to determine whether an Applicant meets the educational, proficiency, character, fitness, and other requirements to be licensed as a Texas attorney.

Major activities include:

- (1) Evaluate every Applicant's eligibility to take Texas Bar Exam
- (2) Evaluate Applicant requests for accommodations for disabilities
- (3) Prepare, administer, and grade the Texas Bar Exam
- (4) Provide formal and informal reviews for certain unsuccessful candidates, on request
- (5) Evaluate Applicant requests to waive a filing deadline, fee requirement, or other Rules
- (6) Determine an Applicant's remaining licensure requirements
- (7) Evaluate any requests from out-of-state attorneys for admission without examination
- (8) Evaluate foreign legal consultant applications and renewals
- (10) Collect non-resident attorney fees

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.**

Our examinations have been repeatedly evaluated by experts. See [Psychometric Audit of the Texas Bar Examinations Administered in 2013](#).

- D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

In October 2014, the Court made major revisions to Rule XIII, with the intent of allowing more foreign-trained Applicants to be eligible to take the Bar Exam and join the Texas Bar. This rule change could significantly increase the number of Applicants sitting for the Bar Exam beginning in FY 2015.

- E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

Categories of Eligibility	Notes/Statistics for FY 2014
J.D. from an ABA-approved law school Pass the Texas Bar Exam Score 85 or higher on the MPRE Satisfy <a href="#">Rule II(a)(5)</a>	3,004 first-time Applicants fell into this category.  About 2395 first-time July 2014 examinees fell into this category. Of those with JDs from Texas law schools, 80.85% passed. Of those with JDs from out-of-state law schools, 69.19% passed.
J.D. from a U.S. law school that is accredited by a state, but not ABA-approved Licensed attorney in another state Actively and substantially engaged in the lawful practice of law as principal occupation for at least 3 of the last 5 years Pass the Texas Bar Exam Score 85 or higher on the MPRE	388 first-time Applicants fell into this category.  About 144 first-time July 2014 examinees fell into this category. 69.19% passed the Bar Exam.

Satisfy <a href="#">Rule II(a)(5)</a>	
<p>Law degree from a foreign law school, based on common law</p> <p>LL.M. from a U.S. ABA-approved law school</p> <p>Pass the Texas Bar Exam</p> <p>Score 85 or higher on the MPRE</p> <p>Satisfy <a href="#">Rule II(a)(5)</a></p> <p>OR</p> <p>Law degree from a foreign law school, based on common law</p> <p>Licensed as an attorney in another state or country</p> <p>Actively and substantially engaged in the lawful practice of law as principal occupation for at least 3 of the last 5 years</p> <p>Pass the Texas Bar Exam</p> <p>Score 85 or higher on the MPRE</p> <p>Satisfy <a href="#">Rule II(a)(5)</a></p> <p>OR</p> <p>Law degree from a foreign law school, not based on common law</p> <p>Licensed as an attorney in another state or country</p> <p>LL.M. from a U.S. ABA-approved law school</p> <p>Pass the Texas Bar Exam</p> <p>Score 85 or higher on the MPRE</p> <p>Satisfy <a href="#">Rule II(a)(5)</a></p>	<p>About 9 first-time July 2014 examinees fell into this category. 33.33% passed the Bar Exam.</p>

<p>J.D. from an ABA-approved U.S. law school</p> <p>Licensed attorney in another state</p> <p>Actively and substantially engaged in the lawful practice of law as principal occupation for at least 5 of the last 7 years</p> <p>Never failed the Texas Bar Exam</p> <p>Score 85 or higher on the MPRE</p> <p>Satisfy <a href="#">Rule II(a)(5)</a></p>	<p>About 518 Applicants applied for admission without examination.</p>
<p>Foreign Legal Consultant</p>	<p>8 new applications received</p>

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

**Determining Eligibility**

The key services and functions of this program are to accomplish the requirements set out in the statutes and the Rules for determining the eligibility of Applicants seeking admission to the Bar of Texas (other than determining the present good moral character and fitness, which is a separate division or program of the agency).

- a. Initial screening for routine deficiencies such as incorrect fees or obvious non-responses on application forms is performed during mail check-in before the file is forwarded to a Licensure Analyst.
- b. Mail check-in staff sends notices of such deficiencies to the Applicant to allow a grace period for resolving the deficiency.
- c. Analysts initially screen the form for responses made by the Applicant, check for required supporting documentation and notify the Applicant of remaining documentation or information that needs to be received to complete the eligibility determination.
- d. Analysts prepare and send correspondence and form letters seeking verification as to eligibility-related matters specified in Rule II(a)(4), III(a) or Rule XIII such as legal education; pertinent employment history or law practice experience; bar admission dates; and status of law license if licensed in another jurisdiction.
- e. The Director and Assistant Director provide training and direction for Licensure Analysts as to the eligibility requirements, the exemptions in Rule XIII, and the issues that can arise pertaining to the eligibility requirements.
- f. After reviewing the application, collecting the required documentation and receiving

responses to verification letters, Licensure Analysts make an assessment as to the Applicant's eligibility for admission to the Texas Bar Examination.

### **Texas Bar Examination**

The key services and functions of this program are to provide a fair, standardized examination through which eligible Applicants seeking admission to the Bar of Texas may demonstrate minimum professional competency as one of the elements required under the statutes and *Rules Governing Admission to the Bar of Texas*. An exemption from the exam requirement may apply to certain attorneys licensed in other states who qualify under Rule XIII(a)(1), but the majority of Applicants are required under Rule II(a)(6) to successfully complete the two and one-half day Texas Bar Examination. Applicant categories include: in-state law students, out-of-state law students, attorneys licensed in other jurisdictions seeking to practice in Texas, attorneys previously licensed seeking reinstatement, foreign nation attorneys, and repeat test takers who have failed a prior exam and who are limited to a total of five attempts even if otherwise eligible. According to Rule XI(e) a passing score on the Texas Bar Examination is a combined scaled score of 675 (of a possible 1000 points).

With regard to the Texas Bar Examination, major program activities include:

#### **1. Question Drafting and Test Preparation**

- a. The members of the Board of Law Examiners are charged with the preparation of test questions in the areas required under Rule XI, i.e. civil and criminal procedure and evidence, business associations, consumer rights, family law, real property including oil and gas, trusts and guardianships, Uniform Commercial Code, and wills and administration.
- b. Draft test questions in the above subjects are extensively reviewed and edited, both by the Board and an outside editor, before printing for each exam.
- c. One Multistate Performance Test (MPT), a long, essay-style question designed to test basic lawyering skills, and the Multistate Bar Examination (MBE), a multiple choice test covering several areas of the law, are purchased from the National Conference of Bar Examiners. Grading the MPT essay answers is the responsibility of Board members and their graders. Grading the MBE is done by machine from an answer grid and is the responsibility of the National Conference or outside contractors under its direction.
- d. The Director and Assistant Director, together with the Executive Director, participate in question review meetings and are responsible for accomplishing agreed editing changes as well as assuring that approved revisions are made before sending camera-ready copy with the order for printing of exam booklets.
- e. The Director and Assistant Director determine the quantity of exam materials to be printed or ordered based on the number of applications received.
- f. The Assistant Director supervises Licensure Analysts and other staff members in packaging and boxing exam materials needed for each exam site.

#### **2. Testing Accommodations for Applicants with Disabilities**

To ensure program accessibility for Applicants with disabilities in accordance with Rule XII and

Government Code Section 82.0272, any Applicant who wants testing accommodations may submit a written request and supporting documentation by completing an application and filing it with an application to take the bar examination. In addition to Rule XII and Appendix C of the *Rules Governing Admission to the Bar of Texas*, the application contains detailed information and instructions for Applicants about the procedure for requesting testing accommodations. The same information and application forms are available and downloadable from the Board's website.

Initially, Licensure Analysts receive applications for accommodations. Analysts verify the completeness of the application and the current licensing or certification of the Applicant's physician, psychologist, or healthcare provider. Analysts prepare a brief outline, for review by the Staff Attorney, describing the nature of the disability or condition, the history of accommodation, and the accommodations requested by the Applicant and recommended by Applicant's health care provider(s).

In many cases, it is necessary or appropriate to seek the advice of an independent physician, psychologist, or other expert consultant to aid in understanding the medical, psychological, or other scientific basis for the diagnosis and the recommendation of accommodations. In these cases, upon initial review of the application and at the direction of the Staff Attorney, the application and supporting documentation is forwarded to a qualified expert for review and advice as to the adequacy of the records submitted to document the diagnosis and the reasonableness of testing accommodations requested.

The Staff Attorney may contact the Applicant to discuss alternative accommodations that may be adequate or that may have been overlooked by the Applicant or the Applicant's healthcare provider in making the request for accommodations.

Based on the final review of the application for accommodations, the supporting documentation, reports from any experts consulted, and information obtained through further interactive communication, if any, with the Applicant or Applicant's care provider, the Staff Attorney will make a determination regarding accommodation for the current exam cycle. The requested testing accommodations may be granted, denied in whole or in part, or accommodations other than those requested may be offered.

The Applicant is sent written notification of the decision in a letter from the Staff Attorney. For any Applicant who has been denied a requested accommodation, in whole or in part, the letter will include an explanation of the procedure for appealing the staff's determination. The Accommodation Review Committee (hereafter "ARC") of the Board considers any such appeals. The committee consists of the Board's Chair, the Vice-Chair, and a member-at-large, who meet periodically in closed meetings to deliberate on appeals from accommodation decisions. Members of the ARC have received specialized training on ADA issues.

Applicants who wish to accept the accommodations offered are required to sign and return a copy of the determination letter indicating they understand the accommodations granted and

their responsibility for maintaining exam security and integrity.

When an Applicant has timely appealed the decision to deny a requested accommodation, the matter is set on the next agenda for a meeting of the ARC.

The ARC reviews the application for accommodations, the supporting documentation, reports from any experts consulted, and other records in the file pertinent to the accommodations request. Copies of the documentation are sent to each member of the committee in advance of the meeting for their individual study, together with a summary report prepared by the Staff Attorney.

ARC members deliberate in a closed meeting, pursuant to Government Code §82.003(e), and vote on whether to affirm, modify, or reverse the Staff Attorney's decision. Applicants are not required to attend, but may attend the segment of the meeting devoted to consideration of their individual appeal.

The Staff Attorney and Assistant Director of Eligibility and Examination supervise the Licensure Analysts and other staff members in: compiling a testing accommodations notebook for each exam site; arranging for court reporters and other special equipment or services; and preparing charts for site administrators and proctors to use during the exam, all to assure that the granted accommodations are appropriately fulfilled.

### 3. Exam Administration

- a. Exam sites are reserved in advance for rental in the cities where the exam will be held, including Austin, Dallas, Houston, Lubbock, San Antonio, and Waco.
- b. All of the Board's staff and the Board members participate in administering the examination. Key personnel (usually including the Executive Director, Executive Assistant, Director and Assistant Director for Eligibility and Examination, and the Director and Assistant Director for Character and Fitness) are assigned to coordinate and supervise staff at the exam sites.
- c. The Board hires temporary exam staff to serve as "proctors" or exam monitors.
- d. Site supervisors and the exam staff are responsible for maintaining the security of exam materials and proper exam conditions.
- e. Completed exams are returned to the Board's office. After sorting in examinee number order and by subject and accounting for each examinee's response, the exam answers are loaded on electronic tablets and shipped to the Board member or designated grader responsible for each subject.

### 4. Grading and Grade Release

- a. The members of the Board of Law Examiners are responsible for grading or supervising the grading of each segment of the Texas Bar Examination, except for the Multistate Bar Examination segment (MBE). The MBE is a multiple-choice exam that is machine graded and statistically scaled by the National Conference of Bar Examiners.

- b. Board members hire and supervise licensed attorney graders and assure that examinee raw scores are timely reported to the Board's office.
  - c. As required by Rule XI(e), the raw scores are scaled using the equipercentile method (based on the array of scaled MBE scores) and then compiled to obtain the combined scaled scores. Scaling of raw scores and compiling of final scores are performed with the aid of a computer system in the Board's office under the immediate direction of the Assistant Director.
  - d. A list of examinees with passing scores is prepared, together with result letters for each examinee. Promptly after the deposit of the result letters in the mail, the list of passing examinees is delivered to the Justices of the Supreme Court of Texas, the Clerk of the Supreme Court of Texas, and the Court of Criminal Appeals of Texas. Copies of the pass list are posted in the State Law Library and on the Board's Internet website as soon as possible thereafter. Copies are also sent to the Board members, the Texas law school deans, and the press. Examinees may also access their scores through the Board's online portal.
  - e. Successful examinees are invited to attend a swearing-in ceremony which is convened a few weeks after grade release by the Supreme Court and the Court of Criminal Appeals jointly in Austin, Texas.
5. Review of Failing Performance Upon Timely Request From Examinees
- a. Within two weeks after grades are released, Applicants may submit a written request for a review of their performance on failed parts of the exam (excluding the MBE).
  - b. An Applicant who has failed at least twice may request a Formal Review and will be scheduled to meet personally with Board members in Austin for a review of their performance on the most recently failed exam. An Applicant may receive only one Formal Review.
  - c. Otherwise an Applicant will receive an Informal Review, which may consist of a written report, a telephone conference or meeting at the Board member's discretion.
  - d. The Board's staff coordinates the review process by notifying Board members of the examinees requesting review, scheduling the examinees, providing support staff for Formal Review meetings in Austin, and collecting and distributing the Board members' written reports to examinees who requested Informal Review.
- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

All funding comes from fees collected from Applicants. The Government Code sets upper limits on fees. The Court sets all fee amounts by Supreme Court Rule.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

N/A

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

N/A

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;

The Board contracts for venues, exam materials, and services to administer each Bar Exam.

- the amount of those expenditures in Apr 2013-March 2014;

1. MultiState Exams (MBE and MPT)	305,079.00
2. Rental of Furn & Equip- Exam	69,249.78
3. Exam Space Rental	91,456.64
4. Court Reporting- Exam	3,105.00
5. Freight-Exam	7852.99
6. Consult Fees- Exam	70,000.00

- the number of contracts accounting for those expenditures;

About 20-25.

- top five contracts by dollar amount, including contractor and purpose;

1. Secure software and associated services from ExamSoft to allow examinees to use their laptops for parts of the Bar Exam. The Board contracts with ExamSoft as the exclusive provider of services, but does not pay any money to ExamSoft. Examinees pay fees directly to ExamSoft to license and download software onto their laptops. The licensing fee and related costs are \$117 per examinee. For the February and July 2014 exams, there were about 3600 laptop examinees, putting the dollar value of the contract at about \$421,200. None of this payment was made by the Board, however.

2. Exam materials (MBE and MPT). In April 2013 - March 2014, the Board paid the NCBE \$305,079 for MPT materials, MBE materials, and MBE grading, for both the July and February exams. NCBE is the only available source for these copyrighted materials.
  3. In 2014, the Board paid SmartCity \$27,882 to provide electrical outlets for examinees who use laptops at the George R. Brown Convention Center during the July 2014 exam.
  4. In 2014, the Board paid the George R. Brown Convention Center \$ 25,283 to rent an Exhibit Hall, with tables and chairs, for the July 2014 Bar Exam in Houston.
- In 2014, the Board paid Darrell Eichman \$23,779.90 to provide IT services and computer programming.
  - **the methods used to ensure accountability for funding and performance; and**  
The Director of Eligibility & Examination monitors contractors performance and approves all payments. The Executive Director also reviews all approved payments.
  - **a short description of any current contracting problems.**  
The cost of administering the exam exceeds the \$95 Examination Fee collected from Applicants without consideration of late fees paid by more than 25% of Applicants. The cost of rental exam space in large metropolitan areas is increasing. Costs are expected to rise—recent Department of Justice interpretations of the ADA suggest that more examinees will request and receive accommodations to take the bar exam.

**L. Provide information on any grants awarded by the program.**

N/A

**M. What statutory changes could be made to assist this program in performing its functions? Explain.**

1. Amend Sec. 82.027 so that the Court has discretion and flexibility to set deadlines.
2. Amend Sec. 82.027 and 82.030 to remove the affidavit requirement.
3. Raise or eliminate statutory fee caps, giving the Court more flexibility to set appropriate fees.

**N. Provide any additional information needed to gain a preliminary understanding of the program or function. Additional information will be provided if requested.**

**O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**  
Determining eligibility for attorney licensing is the first step in protecting the public from unqualified and unfit attorneys. The Board of Law Examiners does not “license”

attorneys or regulate those who are licensed. It's only function is to evaluate and qualify Applicants to be certified as eligible for licensing by the Texas Supreme Court.

- **the scope of, and procedures for, inspections or audits of regulated entities;**

See item F, above.

- **follow-up activities conducted when non-compliance is identified;** N/A

- **sanctions available to the agency to ensure compliance; and**

If an Applicant obtains a license by fraud, the Board can recommend that the Court revoke the license.

- **procedures for handling consumer/public complaints against regulated entities.**

N/A

- P. For each regulatory program, if applicable, provide the following complaint information.

N/A

## VIII. Statutory Authority and Recent Legislation

- A. Fill in the following charts, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2011–2015, or earlier significant Attorney General opinions, that affect your agency's operations.

Texas Board of Law Examiners  
Exhibit 12: Statutes / Attorney General Opinions

<i>Statutes</i>	
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<p style="text-align: center;">Texas Constitutional Provisions and Civil Statutes Relating to Admission to the Bar Constitutional Provisions Article II The Powers of Government</p> <p>§ 1. Division of powers; three separate departments; exercise of power properly attached to other departments</p> <p>Sec. 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.</p>	<p>Establishes the division of powers between three co-equal branches of government in the State of Texas.</p>
<p style="text-align: center;">Government Code Title 2. Judicial Branch Subtitle G. Attorneys Chapter 82. Licensing of Attorneys Subchapter A. Board of Law Examiners</p> <p>§ 82.001. Board of Law Examiners</p> <p>(a) The Board of Law Examiners is composed of nine attorneys who have the qualifications required of members of the Supreme Court.</p> <p>(b) The Supreme Court shall appoint the members of the board for staggered six-year terms, with the terms of one-third of the members expiring August 31 of each odd-numbered year. A member is subject to removal by the Supreme Court as provided by Section 82.0021.</p> <p>(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.</p>	<p>Establishes composition, qualifications, term limits for members of the Board appointed by the Supreme Court of Texas.</p>

<p>82.002. Conflict of Interest</p> <p>(a) In this section, “Texas trade association” means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.</p> <p>(b) A person may not be a member of the Board of Law Examiners and may not be a board employee employed in a “bona fide executive, administrative, or professional capacity,” as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:</p> <p>(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of board interest; or</p> <p>(2) the person’s spouse is an officer, manager, or paid consultant of a Texas trade association in the field of board interest.</p> <p>(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 because of the person’s activities for compensation on behalf of a profession related to the operation of the board.</p> <p>(d) A member of the board who has a financial interest, other than a remote financial interest, in a decision pending before the board is disqualified from participating in the decision.</p>	<p>Delineates conflicts of interest for members and employees of the Board.</p>
<p>82.0021. Removal of Board Members</p> <p>(a) It is a ground for removal from the Board of Law Examiners that a member:</p> <p>(1) does not have, at the time of taking office, the qualifications required by Section 82.001;</p> <p>(2) does not maintain during service on the board the qualifications required by Section 82.001;</p> <p>(3) is ineligible for membership under Section 82.002;</p> <p>(4) cannot, because of illness or disability, discharge the member’s duties for a substantial part of the member’s term;</p> <p>(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board;</p> <p>(6) is incompetent; or</p> <p>(7) is inattentive to the member’s duties.</p> <p>(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.</p>	<p>Sets forth grounds and procedures for removal of members of the Board.</p>

<p>(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the supreme court that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the supreme court that a potential ground for removal exists.</p>	
<p>§ 82.003. Open Records and Open Meetings</p> <p>(a) Except as provided by this section, the Board of Law Examiners is subject to Chapter 552 and Chapter 551.</p> <p>(b) Examination questions that may be used in the future and examinations other than the one taken by the person requesting it are exempt from disclosure.</p> <p>(c) Board deliberations, hearings, and determinations relating to moral character and fitness of an Applicant shall be closed to the public, and records relating to these subjects are confidential. On the written request of an Applicant, however, the Applicant is entitled to:</p> <p>(1) have the Applicant’s character and fitness hearing open to persons designated by the Applicant; or</p> <p>(2) have disclosed to the Applicant records relating to the Applicant’s own moral character and fitness unless the person who supplied the information has requested that it not be disclosed.</p> <p>(d) The board shall not inquire of a person who supplies information relating to an Applicant’s moral character and fitness whether the person objects to disclosure nor inform the person of the right to object.</p> <p>(e) Board deliberations, hearings, and determinations relating to a request by an Applicant who has a disability for testing accommodations under Section 82.0272 on the bar examination shall be closed to the public, and records relating to that subject are confidential.</p>	<p>Makes the Board subject to the Open Records and Open Meetings laws, with stated exceptions.</p>

<p>§ 82.004. Board Duties</p> <p>(a) The Board of Law Examiners, acting under instructions of the Supreme Court as provided by this chapter, shall determine the eligibility of candidates for examination for a license to practice law in this state.</p> <p>(b) The board shall examine each eligible candidate as to the candidate’s qualifications to practice law.</p> <p>(c) The board may not recommend any person for a license to practice law unless the person has shown to the board, in the manner prescribed by the Supreme Court, that the person is of the moral character and of the capacity and attainment proper for that person to be licensed.</p> <p>(d) On written request of an Applicant who fails an examination administered by the board, the board shall give the Applicant an oral or written analysis of the Applicant’s performance on the examination. The Applicant may record an oral analysis.</p> <p>(e) In each city in which an examination is administered, the board shall provide facilities that enable persons having physical, mental, or developmental disabilities to take the examination.</p>	<p>Outlines the duties of the Board.</p> <p>States that the Board shall determine the eligibility of candidates for examination for a license to practice law in Texas, both with regard to character and capacity.</p> <p>Provides for an oral or written analysis of performance for an Applicant who fails an examination.</p> <p>States that the Board shall provide facilities for disabled Applicants in each city where an exam is provided.</p>
<p>§ 82.005. Board Compensation</p> <p>(a) The Supreme Court shall set the compensation of each member of the Board of Law Examiners, excluding reasonable and necessary actual expenses, at an amount that does not exceed \$30,000 a year.</p> <p>(b) Subchapter B, Chapter 659, does not apply to the compensation set under this section.</p>	<p>States that Board member compensation shall not exceed \$30,000.00 per year, excluding necessary and reasonable expenses.</p>
<p>§ 82.006. Sunset Provision</p> <p>The Board of Law Examiners is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.</p>	<p>Makes the Board subject to the Texas Sunset Act.</p>

<p>§ 82.007. Career Ladder; Annual Performance Evaluations</p> <p>(a) The executive director of the Board of Law Examiners or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.</p> <p>(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.</p>	<p>Mandates an intraagency career ladder program and annual performance evaluations for Board employees.</p>
<p>§ 82.0071. Equal Employment Opportunity Policy</p> <p>(a) The executive director of the Board of Law Examiners or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.</p> <p>(b) The policy statement must include:</p> <p style="padding-left: 40px;">(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and</p> <p style="padding-left: 40px;">(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.</p> <p>(c) The policy statement must be:</p> <p style="padding-left: 40px;">(1) updated annually;</p> <p style="padding-left: 40px;">(2) reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and</p> <p style="padding-left: 40px;">(3) filed with the governor's office and the supreme court.</p>	<p>Establishes the requirements for the implementation of an equal employment opportunity program to be updated, reviewed, and filed as noted.</p>
<p>§ 82.0072. Standards of Conduct</p> <p>The executive director of the Board of Law Examiners or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.</p>	<p>States Board members and employees shall be provided with information regarding the requirements for office or employment under this chapter.</p>

<p>§ 82.0073. Separation of Responsibilities</p> <p>The Board of Law Examiners shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.</p>	<p>Provides for the development and implementation of policies that clearly separate the policy making responsibilities of the Board and the management responsibilities of its staff.</p>
<p>§ 82.008. Public Information</p> <p>(a) The Board of Law Examiners shall prepare information of public interest describing the functions of the board. The board shall make the information available to the public and appropriate agencies.</p> <p>(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. However, the board may prohibit public testimony that would reveal the examination questions described by Section 82.003(b) or would relate to the moral character or fitness of an Applicant for a license.</p>	<p>Requires the Board to prepare and provide information of public interest describing its functions.</p> <p>Requires the Board to implement policies providing the public with a reasonable opportunity to address the Board on issues under its jurisdiction.</p>
<p>§ 82.009. Program Accessibility</p> <p>The Board of Law Examiners shall prepare and maintain a written plan that describes how a person who has a physical, mental, or developmental disability can be provided reasonable access to the board's programs.</p>	<p>Requires the Board to prepare and maintain a written plan to provide disabled persons with reasonable access to its programs.</p>

<p>§ 82.010. Training Program Required</p> <p>(a) A person who is appointed to and qualifies for office as a member of the Board of Law Examiners may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.</p> <p>(b) The training program must provide the person with information regarding:</p> <ol style="list-style-type: none"> <li>(1) the legislation that created the board;</li> <li>(2) the programs operated by the board;</li> <li>(3) the role and functions of the board;</li> <li>(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;</li> <li>(5) the current budget for the board;</li> <li>(6) the results of the most recent formal audit of the board;</li> <li>(7) the requirements of: <ol style="list-style-type: none"> <li>(A) the open meetings law, Chapter 551;</li> <li>(B) the public information law, Chapter 552;</li> <li>(C) the administrative procedure law, Chapter 2001; and</li> <li>(D) other laws relating to public officials, including conflict-of-interest laws; and</li> </ol> </li> <li>(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.</li> </ol>	<p>Establishes the requirements of a training program for new members of the Board.</p>
<p>§ 82.011. Written Complaints</p> <p>(a) The Board of Law Examiners shall maintain a file on each written complaint filed with the board. The file must include:</p> <ol style="list-style-type: none"> <li>(1) the name of the person who filed the complaint;</li> <li>(2) the date the complaint was received by the board;</li> <li>(3) the subject matter of the complaint;</li> <li>(4) the name of each person contacted in relation to the complaint;</li> <li>(5) a summary of the results of the review or investigation of the complaint; and</li> <li>(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.</li> </ol> <p>(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.</p> <p>(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.</p>	<p>Requires the Board to maintain a file on each written complaint it filed with the Board.</p>

<p>§ 82.013. Effective Use of Technology</p> <p>The Board of Law Examiners shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board’s ability to perform its functions. The technological solutions must:</p> <p>(1) ensure that the public is able to easily find information about the board on the Internet;</p> <p>(2) ensure that persons who want to use the board’s services are able to:</p> <p>(A) interact with the board through the Internet; and</p> <p>(B) access any service that can be provided effectively through the Internet; and</p> <p>(3) be cost-effective and developed through the board’s planning processes.</p>	<p>Requires the Board to develop and implement policies to ensure the effective use of technology in its interactions with the public.</p>
<p style="text-align: center;">Subchapter B. Licensing of Attorneys</p> <p>§ 82.021. Supreme Court Authority</p> <p>Only the supreme court may issue licenses to practice law in this state as provided by this chapter. The power may not be delegated.</p>	<p>Recognizes that only the Supreme Court of Texas may issue licenses to practice law in the State of Texas.</p>

<p>82.022. Supreme Court Rulemaking</p> <p>(a) The Supreme Court may adopt rules on eligibility for examination for a license to practice law and on the manner in which the examination is conducted. The rules may include:</p> <p>(1) provisions to ensure:</p> <p>(A) good moral character of each candidate for a license;</p> <p>(B) adequate prelegal study and attainment; and</p> <p>(C) adequate study of the law for at least two years, covering the course of study prescribed by the supreme court or the equivalent of that course;</p> <p>(2) the legal topics to be covered by the course of study and by the examination;</p> <p>(3) the times and places for holding the examination;</p> <p>(4) the manner of conducting the examination;</p> <p>(5) the grades necessary for licensing; and</p> <p>(6) any other matter consistent with this chapter desirable to make the issuance of a license to practice law evidence of good character and fair capacity and attainment and proficiency in the knowledge of law.</p> <p>(b) The Supreme Court shall adopt rules necessary to administer its functions and to govern the administration of the Board of Law Examiners' functions relating to the licensing of lawyers.</p> <p>(c) The Supreme Court may adopt rules relating to the nonrenewal of the license of a lawyer who is in default on a loan guaranteed under Chapter 57, Education Code, by the Texas Guaranteed Student Loan Corporation.</p>	<p>States that the Supreme Court of Texas may adopt rules to govern the Board's functions related to the licensing of lawyers.</p>
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<p>§ 82.023. Declaration of Intention to Study Law</p> <p>(a) Each person intending to apply for admission to the bar must file with the Board of Law Examiners, on a form provided by the board, a declaration of intention to study law.</p> <p>(b) The form for the declaration must clearly identify those conditions of character and fitness set out in Section 82.027 that may be investigated by the board and that may result in the denial of the declarant’s application to take the examination.</p> <p>(c) The board shall notify each first-year law student who files the declaration on or before January 1 of the year in which the student begins law school, not later than August 1 of the following year, of the board’s decision as to the student’s acceptable character and fitness. The board shall notify all other declarants not later than the 270th day after the date the declaration was filed whether or not it has determined that the declarant has acceptable character and fitness.</p> <p>(d) If the board determines that an Applicant does not have acceptable character and fitness, the notice of the decision must be accompanied by an analysis of the character investigation that specifies in detail the results of the investigation. The analysis must include an objective list of actions the Applicant may take to become qualified for a license to practice law.</p> <p>(e) If the board determines that an Applicant may suffer from chemical dependency, the board shall require the Applicant to meet with representatives of the Lawyers’ Assistance Program of the State Bar of Texas or a similar program of the state bar and may require the Applicant to submit to a treatment facility for evaluation.</p> <p>(f) If the board determines that an Applicant suffers from chemical dependency, the board shall assist the Applicant in working with the Lawyers’ Assistance Program of the State Bar of Texas or a similar program of the state bar.</p> <p>(g) in this section:</p> <p>(1) “Chemical dependency” has the meaning assigned by Section 82.038.</p> <p>(2) “Treatment facility” has the meaning assigned by Section 462.001, Health and Safety Code.</p>	<p>Establishes the procedures and deadlines governing the Board’s investigation of the declaration of intention required from each in-state law student intending to apply for admission in Texas.</p>
<p>§ 82.024. Law Study Requirements; Eligibility for Examination</p> <p>A person who has completed the prescribed study in an approved law school has satisfied the law study requirements for taking the examination for a license to practice law and is eligible to take the bar examination. An approved law school is one that is approved by the supreme court for the time period designated by the court as maintaining the additional standards to retain approval.</p>	<p>States that the persons who have completed the prescribed study at law schools approved by the Supreme court of Texas are eligible to take the bar examination.</p>

<p>§ 82.0241. Unaccredited Schools of Law</p> <p>All matters relating to licensing of persons who were enrolled at unaccredited schools of law in this state are within the exclusive jurisdiction of the Supreme Court of the State of Texas.</p>	<p>Acknowledges that the Supreme Court of Texas has exclusive jurisdiction related to licensing of persons who were enrolled at unaccredited schools of law in this state.</p>
<p>§ 82.027. Application for Examination</p> <p>(a) Each Applicant to take a bar examination must file an application with the Board of Law Examiners not later than the 180th day before the first day of the examination for which the person is applying.</p> <p>(b) The application consists of a verified affidavit stating that since the</p> <p>(1) has not been formally charged with any violation of law, excluding:</p> <p>(A) cases that have been dismissed for reasons other than technical defects in the charging instrument;</p> <p>(B) cases in which the Applicant has been found not guilty;</p> <p>(C) minor traffic violations;</p> <p>(D) cases in which the record of arrest or conviction was expunged by court order;</p> <p>(E) pardoned offenses; and</p> <p>(F) Class C misdemeanors;</p> <p>(2) is not mentally ill;</p> <p>(3) has not been charged with fraud in any legal proceeding; and</p> <p>(4) has not been involved in civil litigation or bankruptcy proceedings that reasonably bear on the Applicant's fitness to practice law.</p> <p>(c) On a showing of good cause or to prevent hardship, the board may permit an Applicant to file an application with the board not later than the 60th day after the deadline prescribed by Subsection (a) on payment of applicable late fees.</p> <p>(d) The filing deadlines and late fees do not apply to an Applicant who failed the preceding bar examination. Any such Applicant may take the next examination administered on filing an application with the board and paying the required examination fees not later than the date established by Supreme Court rule.</p>	<p>Established the requirements and deadlines related to the application required from each Applicant intending to take a bar examination in Texas.</p>

<p>§ 82.0271. Residency or Citizenship Status of Applicant</p> <p>A person who has applied to take the bar examination may not be denied admission to the bar examination based on the Applicant's lack of:</p> <p>(1) permanent residency in the United States; or</p> <p>(2) United States citizenship.</p>	<p>States that persons may not be denied admission to the bar examination due to a lack of permanent residency in the United States or a lack of United States citizenship.</p>
<p>§ 82.0272. Testing Accommodations for Applicants with Disabilities</p> <p>An Applicant who has a physical, mental, or developmental disability may request that the Board of Law Examiners provide testing accommodations on the bar examination. An Applicant whose request is denied may appeal the decision to a committee appointed by, and composed of three or more members of, the board.</p>	<p>States that disabled Applicant may request testing accommodations and those whose requests are denied may appeal to a committee of three or more members of the Board.</p>
<p>§ 82.028. Moral Character and Fitness of Applicant</p> <p>(a) The Board of Law Examiners may conduct an investigation of the moral character and fitness of each Applicant for a license.</p> <p>(b) The board may contract with public or private entities for investigative services relating to the moral character and fitness of Applicants.</p> <p>(c) The board may not recommend denial of a license and the supreme court may not deny a license to an Applicant because of a deficiency in the Applicant's moral character or fitness unless:</p> <p>(1) the board finds a clear and rational connection between a character trait of the Applicant and the likelihood that the Applicant would injure a client or obstruct the administration of justice if the Applicant were licensed to practice law; or</p> <p>(2) the board finds a clear and rational connection between the Applicant's present mental or emotional condition and the likelihood that the Applicant will not discharge properly the Applicant's responsibilities to a client, a court, or the legal profession if the Applicant is licensed to practice law.</p> <p>(d) The board shall limit its investigation under this section to those areas clearly related to the Applicant's moral character and present fitness to practice law.</p>	<p>Addresses the scope of the Board's character and fitness examination and the grounds for denial of admission.</p> <p>States that the Board may conduct an investigation of the good moral character and fitness of each Applicant.</p> <p>Establishes the limits of the investigation and grounds for denial of Applicants on the basis of a lack of good moral character or fitness.</p>

<p>§ 82.029. Release of Bar Examination Results</p> <p>(a) On request of a law school that is conducting research on the achievement of the law school's students or graduates on the Texas bar examination, the Board of Law Examiners shall provide the law school with information concerning the results of a bar examination and the achievement of particular Applicants on the examination, including examination results disaggregated by section or portion of the examination and any relevant statistics related to the results of the examination.</p> <p>(b) An Applicant may request that the board not release the Applicant's identity to a law school that requests information under Subsection (a). The board shall grant the Applicant's request if the Applicant:</p> <p>(1) sends the request to the board by certified mail or a comparable mailing method that provides proof of delivery; and</p> <p>(2) makes the request before the Applicant takes the bar examination.</p> <p>(c) A law school that receives information from the board under Subsection (a) is subject to any restriction on the release of the information under federal or state law.</p> <p>(d) Notwithstanding any other law, information that the board provides to a law school under Subsection (a) is confidential and may not be disclosed under any law related to open records or public information.</p>	<p>Establishes the procedures governing the release of grade information to law schools conducting research on the achievement of its students or graduates.</p>
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<p>82.030. Board Assessment of Moral Character and Fitness</p> <p>(a) The Board of Law Examiners shall assess each Applicant’s moral character and fitness based on:</p> <p>(1) the investigation of character and fitness performed after the filing of the declaration of intention to study law; and</p> <p>(2) the filing of the affidavit required by Section 82.027 and the board’s investigation into the accuracy and completeness of the affidavit.</p> <p>(b) If the board determines that the Applicant does not have the requisite good moral character and fitness, the board, not later than the 150th day after the day on which the application is filed, shall furnish the Applicant an analysis of the character investigation that specifies in detail the results of the investigation. The analysis must include an objective list of actions the Applicant may take to become qualified for a license to practice law.</p> <p>(c) If the board determines that an Applicant may suffer from chemical dependency, the board shall require the Applicant to submit to a treatment facility for evaluation.</p> <p>(d) If the board determines that an Applicant suffers from chemical dependency, the board shall assist the Applicant in working with the Lawyers’ Assistance Program of the State Bar of Texas or a similar program of the state bar.</p> <p>(e) The board may not deny an Applicant the opportunity to take the bar examination solely because the Applicant:</p> <p>(1) suffers or appears to suffer from chemical dependency; or</p> <p>(2) has been convicted of or is on community supervision for a first offense of operating a motor vehicle while intoxicated under Section 49.04, Penal Code, or intoxication assault committed while operating a motor vehicle under Section 49.07, Penal Code.</p> <p>(f) In this section, “treatment facility” has the meaning assigned by Section 462.001, Health and Safety Code.</p> <p>(g) Subject to Supreme Court adoption by rule, the board shall define “chemical dependency.”</p>	<p>Establishes the procedures and deadlines governing the Board’s assessment of each Applicant’s moral character and fitness.</p>
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<p>§ 82.033. Fees</p> <p>(a) The Supreme Court shall set the fee for the investigation of the moral character and fitness of each candidate at an amount that does not exceed \$150. The candidate must pay the investigation fee to the Board of Law Examiners at the time it is requested by the board.</p> <p>(b) The Supreme Court shall set the fee for any examination given by the board at an amount that does not exceed \$150. The candidate must pay the fee to the board at the time the candidate applies for examination.</p> <p>(c) The Supreme Court may set an application fee for foreign attorneys at an amount that does not exceed \$700.</p> <p>(d) The Supreme Court may set reasonable fees for additional services provided by the board, but the fee for any single additional service may not exceed \$150.</p> <p>(e) The fees set by the Supreme Court must be sufficient to pay all costs of the board, including staff salaries, compensation to members of the board, and costs of investigation and administering the examinations, so that state general revenue funds are not necessary to operate the board.</p> <p>(f) The board may adopt rules that provide for waiving or lowering for indigent persons a fee required by this section.</p>	<p>Establishes caps for the investigation, examination, and additional fees to be charged by the Board for its services.</p> <p>States such fees must be sufficient to pay all the costs of the Board.</p>
<p>§ 82.034. Use of Funds</p> <p>Fees received by the Board of Law Examiners shall be deposited in a fund established by the supreme court. The fund may be used only to administer the functions of the supreme court and the board relating to the licensing of lawyers. The fund shall be used as directed by the supreme court and under supreme court rules.</p>	<p>Requires that fees received by the Board shall be deposited in a fund established by the Supreme Court to be used to administer the functions of the Board and the Supreme Court related to the licensing of lawyers, under the Court's rules.</p>
<p>§ 82.035. Audit; Financial Report</p> <p>(a) The financial transactions of the Board of Law Examiners are subject to audit by the state auditor in accordance with Chapter 321.</p> <p>(b) The board shall file annually with the Supreme Court, the governor, and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received or disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.</p>	<p>Makes the financial transactions of the Board subject to audit by the state auditor and requires the Board to file an annual report accounting for all funds received and disbursed.</p>

<p>§ 82.036. Foreign Attorneys</p> <p>The supreme court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this state as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character.</p>	<p>Makes the admission of foreign attorneys subject to supreme court rule and requires all such attorneys to furnish satisfactory proof of good moral character.</p>
<p>§ 82.0361. Nonresident Attorney Fee</p> <p>(a) In this section, “nonresident attorney” means a person who resides in and is licensed to practice law in another state but who is not a member of the State Bar of Texas.</p> <p>(b) Except as provided by Subsection (e), a nonresident attorney requesting permission to participate in proceedings in a court in this state shall pay a fee of \$250 for each case in which the attorney is requesting to participate. The attorney shall pay the fee to the Board of Law Examiners before filing with the applicable court a motion requesting permission to participate in proceedings in that court as provided by rules adopted by the supreme court.</p> <p>(c) Fees under this section shall be collected in the same manner as other fees collected by the Board of Law Examiners. The board shall remit the fees collected under this section to the comptroller not later than the 10th day after the end of each calendar quarter.</p> <p>(d) The comptroller shall deposit the fees received under this section to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent.</p> <p>(e) The Supreme Court may adopt rules to waive or reduce the fee required by this section for a nonresident attorney who seeks to represent an indigent person in proceedings in a court in this state.</p> <p>(f) A nonresident attorney who files a motion requesting permission to participate in proceedings in a court in this state shall provide to that court proof of payment of the fee required by this section. The Supreme Court by rule shall prescribe the method of proof.</p>	<p>Establishes the fees to be paid by non-resident attorneys requesting permission to participate pro hac vice pursuant to rules adopted by the Supreme court.</p> <p>Provides that the Board shall collect and remit such fees quarterly to the comptroller for use in programs approved by the Court that provide basic legal services to the indigent.</p>

§ 82.038. Probationary License for Applicant Suffering From Chemical Dependency

(a) If, after a moral character and fitness assessment, the Board of Law Examiners determines that the Applicant suffers from chemical dependency, the board shall notify the Applicant of its determination and of the Applicant's rights under this section.

(b) To obtain judicial review of the board's determination that the Applicant suffers from chemical dependency, an Applicant must file a petition in the district court of Travis County before the 60th day after the date that the board delivers notice of its determination. The petition must name the board as a defendant and be served on the executive director of the board. Before the date on which the Applicant may obtain a default judgment against the board, the board shall file with the district court a certified record of the proceedings before the board.

(c) A party is not entitled to a jury in a judicial review of the board's determination that an Applicant suffers from chemical dependency. The court may not substitute its judgment for that of the board as to the weight of the evidence on questions submitted to the board's discretion but shall affirm the board's decision if the decision is reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole.

(d) The board may not deny a person who successfully takes the bar examination a probationary license to practice law solely because the person:

(1) suffers from chemical dependency; or

(2) has been convicted of or is on community supervision for a first offense of operating a motor vehicle while intoxicated under Section 49.04, Penal Code, or intoxication assault committed while operating a motor vehicle under Section 49.07, Penal Code.

(e) The board shall specify the conditions of a probationary license to practice law, which must be designed to protect the public from the potential harm the person might cause. Conditions of a probationary license may include one or more of the following:

(1) prohibiting the person from using alcohol or controlled substances;

(2) treatment for chemical dependency;

(3) supervision of the person's work by a licensed attorney;

(4) submissions to periodic drug testing;

(5) periodic reporting by the person to the board; or

(6) suspension, for a portion of the probationary period, of an activity for which a license to practice law is required.

Establishes that the Board may not deny a person who passes the bar examination a probationary license based on chemical dependency alone. Provides for judicial review of a final decision of the Board finding an Applicant to have chemical dependency.

(f) A probationary license issued under this section expires on the second anniversary of the date on which the license is issued. A person who holds a probationary license may apply for a renewal of the probationary license or for a regular license to practice law. The board, after redetermination of the character and fitness of a person who holds a probationary license, may recommend to the Supreme Court that it grant the person a regular license to practice law. The redetermination must include an evaluation of the person by a treatment facility. The board may not recommend to the Supreme Court that the person be granted a regular license to practice law unless the board finds that the person has successfully completed treatment and has been free from chemical dependency for the preceding two years.

The supreme court shall adopt rules under which the board and the State Bar of Texas jointly develop and fund a program for evaluation and referral to treatment for persons who have been issued a probationary license under this section.

(g) A probationary license may be immediately revoked if the person violates a condition of probation imposed by the board.

(h) On request, the board in coordination with the State Bar of Texas shall inform a member of the public whether a particular person holds a probationary license. Any information that forms the basis for the issuance of the probationary license is confidential.

(i) In this section:

(1) "Chemical dependency" has the meaning provided by supreme court rule adopted under Section 82.030.

(2) "Controlled substance," "treatment facility," and "treatment" have the meanings assigned by Section 462.001, Health and Safety Code.

<p style="text-align: center;">Title 4. Executive Branch</p> <p style="text-align: center;">Subtitle B. Law Enforcement and Public Protection</p> <p style="text-align: center;">Chapter 411. Department of Public Safety of the State of Texas</p> <p style="text-align: center;">Subchapter F. Criminal History Record Information</p> <p style="text-align: center;">(excerpts pertaining to Board of Law Examiners)</p> <p>§ 411.081. Application of Subchapter</p> <p>(a) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to the following noncriminal justice agencies or entities only:</p> <p style="text-align: center;">*****</p> <p>(5) the Board of Law Examiners</p> <p style="text-align: center;">*****</p> <p>411.100. Access to Criminal History Record Information: Board of Law Examiners</p> <p>(a) The Board of Law Examiners is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who an Applicant to take a bar examination.</p> <p>(b) Criminal history record information obtained by the board under Subsection (a) may not be released or disclosed to any person, except on court order or with consent of the Applicant.</p> <p>(c) Immediately following the board’s decision on recommending an Applicant, the board shall collect and seal all criminal history record information obtained by the board that relates to that Applicant.</p>	<p>Establishes that a criminal justice agency may disclose criminal history information that is the subject of an order of non-disclosure to the Board.</p> <p>Allows the Board to obtain criminal history record information from the Texas Department of Public Safety.</p>
<p>42 U.S.C. §12101 The American with Disabilities Act Amendments Act</p>	<p>Requires the Board to provide access to its programs and facilities in a manner that does not discriminate against those with disabilities.</p>

**Attorney General Opinions**

Attorney General Opinion No.	Impact on Agency
Open Records Letter No. 92-267 (1992)	States that all the Board’s records that come under Section 82.003(b) or (c) Of the Government Code or an Order of the Supreme Court issued July 7, 1987 designed to clarify the provisions of 82.003 and 82.029, are not subject to the Open Records Act.
OR93-308 (1993)	States that a requestor’s examination booklets, to the extent that they contain the examinee’s answers, are not subject to the Open Records Act, by virtue of the July 7, 1987 Order of the Supreme court of Texas.
OR623 (1994)	States that the Board may withhold information, otherwise available to an Applicant under the Open Records Act, if the person who has supplied the information to the Board has requested that the Board not disclose it.
Opinion No. JC-0050 (1999)	States that a licensing agency, under the Americans with Disabilities Act, must consider an Applicant’s request for accommodations and sets forth factors the agency should consider regarding such a request.
OR2003-8161 (2003)	States that interim and final grades of examinees whose essays on the business association portion of the bar examination were regraded by a named individual between Feb. 2000 and Feb. 2003 are exempt from disclosure given 82.003(b) of the Government Code and the July 7, 1987 Order of the Supreme Court.
OR2005-01645 (2005)	Bar examination results, including the raw and scaled scores of all Applicants and for all sections of the July 2004 bar examination is subject to section 82.003(b) of the Government Code and the July 7, 1987 Order of the Supreme court and need not be released.

- B. Provide a summary of recent legislation regarding your agency by filling in the charts below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). Place an asterisk next to bills that could have a major impact on the agency.**

**Board of Law Examiners  
Exhibit 13: 84th Legislative Session**

***Legislation Enacted***

Bill Number	Author	Summary of Key Provisions
SB 534	Watson et al.	Amends the attorney’s oath to require each attorney to swear to “conduct oneself with integrity and civility in dealing with the court and all parties.”

***Legislation Not Passed***

Bill Number	Author	Summary of Key Provisions / Reason Bill Did Not Pass
HB 1644	Smithee	Relating to the oath of a person admitted to practice law in the State of Texas / Laid on the table subject to call.
HB 1909	Hunter	Relating to the oath of a person admitted to practice law in the State of Texas / Referred to committee.
HB 2045	White	Relating to the eligibility of attorneys who hold a law license issued by another state to take the state bar examination / Left pending in committee. Would have allowed attorneys from non-approved law schools to take the bar examination.
SB 1430	Hall	Relating to the eligibility of attorneys who hold a law license issued by another state to take the state bar examination / Referred to committee. Would have allowed attorneys from non-approved law schools to take the bar examination.

**IX. Major Issues**

Issues affecting the Board’s performance of its duties, which might be addressed through legislation, include the following:

1. The statutory deadlines for filing applications for admission to the Bar and the Declaration of Intention to Study Law are impractical to implement and are unnecessarily restrictive.
2. The statutory fee ceilings in Sec. 82.033 do not provide adequate discretion for the Supreme Court to increase fees to cover likely increased costs of bar examination administration.
3. A verified affidavit is an unnecessary requirement for the Application for Admission to the Bar, but is dictated by statute, Secs. 82.027 and 82.030.
4. The statutory application scheme does not address application requirements for non-resident Applicants who did not attend a Texas law school and therefore do not file a Declaration of Intention to Study Law and it allows for less time to complete investigations for out of state Applicants.

5. Sec. 82.022(c) deals with nonrenewal of a law license but does not address qualifications for admission to the Bar and therefore is not related to that section of the Government Code that is only concerned with qualifying Applicants for initial admission to the Bar.
6. Current reading of the Americans with Disabilities Act, as asserted by the United States Department of Justice and disability rights advocates, may conflict with statutory provisions directing the Board to consider “mental illness” and “chemical dependency” diagnoses as criteria for licensing.

#### **1.A. Brief Description of Issue – Application Deadlines.**

Government Code Section 82.027 requires each Applicant for the bar examination to file an application not later than the 180<sup>th</sup> day before the first day of the examination applied for or, upon payment of a late fee, not more than 60 days after the first application deadline. These dates provide more time than is necessary to process all applications received in advance of the examination dates. The Supreme Court Rules Governing Admission to the Bar, Rule IX provides specific dates for application deadlines that approximate the statutory deadlines but do not exactly coincide with the statute.

#### **1.B. Discussion.**

During the last Sunset review in 2003, the Board staff reported that the statutory bar application deadlines conflicted with the deadlines in the Supreme Court rules. In 2003, the Legislature amended the statute to exempt Applicants who fail the exam and re-apply for the next examination, and to allow the Board to accept applications filed not more than 60 days after the 180 day statutory deadline, with the payment of a late fee.<sup>1</sup> Although the statute authorizes such late filing to be permitted upon showing of “good cause or to prevent hardship,” the Board routinely accepts late filing without any showing of good cause or hardship, upon payment of a \$150 late fee if the application is received on or before the late filing deadline established by Supreme Court rule. The Supreme Court rule deadline closely approximates the statutory late filing deadline.

In 2015, the Board began receiving online payment of the \$250 fee required by Government Code Section 82.0361 for an out of state lawyer to appear by permission in a Texas court. Online payment of other fees will soon be accepted by the Board, along with electronic filing of applications and required documentation. Previously, all applications were received by mail and payments were accepted only in the form of checks and money orders. The Board staff therefore necessarily processed by hand a very large volume of mail including hundreds of thousands of dollars in paper checks received during the weeks preceding each application filing deadline, occurring four times a year. With the transition to electronic filing and payment by electronic check and credit card through Texas.gov, applications and payments will be processed more efficiently.

Because the last date to pay the late fee and apply for the Texas Bar Exam is approximately four months in advance, many Applicants request permission to file even later, often because the

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<sup>1</sup> Tex. Gov’t Code Sec. 82.027(c) and (d).

Applicant simply did not decide to apply for admission until after the late filing deadline has passed. A considerable amount of staff and Board member time is expended reviewing and considering requests to waive the late filing deadline. In fact, due to increased efficiency, it is practically possible for the Board to process applications filed later than four months prior to the exam. Allowing for a later “late-filing” deadline would eliminate some of the requests to waive the statutory filing deadline and better serve the needs of Applicants who may not determine the need to take the Texas Bar Exam far enough in advance to meet the current “late” deadline. Because the exam is given only twice each year, missing the “late” filing deadline creates a minimum six month delay in obtaining licensure.

### **1.C. Possible Solutions and Impact.**

Eliminating the statutory filing deadlines and allowing the Supreme Court to establish deadlines by rule would eliminate the existing conflict between the statute and the Court’s rules, avoid ambiguity and allow the Board to take advantage of increased efficiency that might better serve the affected members of the public. A significant “no fault” late fee penalty payment of at least \$250 up to \$750 would discourage very late filing and would help defray any additional expense for temporary workers or contract services required to process the very late filed applications, while eliminating the need for the Board to make a time-consuming case by case determination of “good cause.” Other states provide for late filing fees ranging from \$250 to \$1,450 and allow filing upon payment of such fees as late as June 15, approximately 40 days before the July Bar Exam.<sup>2</sup>

### **2.A. Brief Description of Issue - Fee Ceilings.**

Although fees charged by the Board are set by the Supreme Court, Government Code Sec. 82.033 establishes the maximum fee amounts. All fees are capped by statute at \$150 other than the application fee for foreign attorney Applicants that cannot exceed \$700. The maximum amounts have not been increased since 1985.<sup>3</sup> Although the Supreme Court has not set all fees at the maximum amount, many of the current fees are at or near the statutory maximum. Application fees in all categories have been set by the Supreme Court at the maximum amounts of \$150 for law students and \$700 for attorneys applying for admission from other states and foreign nations.

Since 1985, the cost of administering the Texas Bar Exam has increased in several significant aspects, primarily relating to the cost of renting examination sites in large urban areas of the state, the cost to provide electrical outlets for examinees using laptops, the cost to accommodate persons with disabilities who receive special accommodations, and the cost to purchase exam materials from the National Conference of Bar Examiners (NCBE).

### **2.B. Discussion.**

The Texas Supreme Court requires all Applicants for the Bar to pass the Multi-State Bar Exam (MBE) and the Multi-State Practice Skills Test (MPT) as part of the Bar Exam administered twice

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<sup>2</sup> Florida late fee is \$625 to file June 15; California late fee is \$250 after April 30; Illinois late fee is \$1450 for out of state Applicants filing by May 31; Missouri late fee is \$560 to file by May 31. New York does not allow any late filings.

<sup>3</sup> Acts 1985, 69<sup>th</sup> Leg., Ch. 524, Sec. 4.

a year.<sup>4</sup> These examinations are nationally standardized, copyrighted products created and sold by the NCBE. There is no competing source for bar examination materials. NCBE also grades the MBE, a 200 question multiple-choice test, which is used to scale all final scores on the Texas Bar Exam. The MBE is also required by 48 other states for admission to the bar. (Louisiana is the only state that does not require passage of the MBE). Texas began using the MPT in 1997.

The cost to purchase the NCBE multi-state bar examination materials has increased five-fold since 1985. In 1985, the Board spent \$65,840 to purchase the MBE. In 2015, the Board's combined cost to purchase the MBE and MPT was \$332,436. It is reasonable to assume that the cost for these examinations will continue to increase. Furthermore, 18 states have now adopted the Uniform Bar Exam (UBE), consisting of the MBE, MPT and the Multi-state Bar Exam Essays (MBEE). The UBE presents an advantage to examinees because a passing score is transferable to any of the 16 states that currently accept it. Even today, 50% of a Texas Bar Exam score is based on the examinee's combined performance on the MBE and MPT. If more states adopt the UBE, market forces may compel Texas to do so and the cost to purchase UBE materials from NCBE will increase accordingly.

Rental rates for commercial event space in Texas' urban areas have also increased dramatically in the past 30 years. In 1985, the Board budgeted \$20,000 for rental expenses to administer the bar exam in six locations. In 2015, the budgeted amount was \$114,000, more than a five-fold increase. This figure does not include the cost to provide electrical outlets for examinees' laptops, an expense that was not even contemplated in 1985. The Board spent over \$27,000 for electrical facilities at the Houston exam site, alone, in July 2014. The overwhelming majority of examinees (approximately 90%) now use laptops to answer written portions of the exam.

In 2008, Congress amended the Americans with Disabilities Act, (ADA) finding that judicial interpretation of the original 1990 enactment resulted in narrowing of the "broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect."<sup>5</sup> Congress directed that the definition of disability be construed in favor of broad coverage of the ADA. During the period from 2006 to 2009, when the amendments first took effect, accommodation requests received by the Board for the July exam ranged from a low of 38 to a high of 52. From 2010 to 2014, the number of requests received went from a low of 51 to a high of 90. These figures indicate a definite increase in such requests since the ADA was amended and the U.S. Department of Justice enacted new regulations on accommodations in 2010.

As required by the ADA, the Board necessarily provides accommodations to persons who apply for the Bar examination and who demonstrate a mental or physical disability. Government Code Sec. 82.004(e) requires the Board to make accommodations for examinee with disabilities at every examination site. These accommodations may require rental of separate exam rooms, court reporters to record the examinees' answers and extra payroll expense for additional proctors to monitor examinees for extended hours in separate examination rooms. The

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<sup>4</sup> Rule 11, *Rules Governing Admission to the Bar of Texas*.

<sup>5</sup> U.S. Congressional Record, S.3406, Sec. 2, September 17, 2008.

Applicant is required to submit documentation to support the claimed disability and requested accommodation. Increasingly, the requests are based on assertions of behavioral or learning disabilities. In many cases, the Board seeks review of this documentation by expert consultants. The cost for consultant review is the Board's expense. In FY 2014, the Board spent \$16,200 for accommodation review consultations and approximately \$5,000 to provide test site accommodations. In FY 2015, the cost for consultants was \$13,500, the cost for court reporting services was \$7,950, and the cost for test site accommodations was \$9,600.

When the current fee limitations were set in 1985, the ADA had not yet been enacted and disability accommodations were rarely, if ever, provided. In 2014, a total of 115 accommodation requests were received. The Board has seen an increasing number of accommodation requests since the ADA amendments took effect in 2009 and anticipates continued expansion of the need for and cost of making accommodations available as required by law.

### **2.C. Possible Solutions and Impact.**

Due to these expanding costs for administration of the Bar Exam, an increase in the maximum fees charged by the Board, to be set by the Supreme Court, is warranted. Improved efficiency in processing applications through technological innovations, together with an increased number of Applicants has allowed the Board to operate within the current fee limitations despite significant cost increases. Continued increases in the number of bar Applicants cannot be assumed. In fact, the number of persons attending U.S. law schools has reportedly decreased by 27% since 2010<sup>6</sup>, although the reduction in law school matriculation has been countered by increasing numbers of Texas Bar Applicants from out of state. This is due, at least partly, to a relatively healthy Texas job market, and other market forces that are neither predictable nor within the Board's control.

The Board recommends a \$100 increase in all fees across the board to either \$250 from \$150 or \$800 from \$700 for foreign Applicants. In addition, if the Supreme Court is authorized to set deadlines for filing applications for the Bar Exam, the Board proposes to establish a "Very Late" no fault filing deadline that would allow Applicants to file as late as 60 days before the exam date, upon payment of a significant late fee, as large as \$750. This would eliminate the need for requests to waive the filing deadline on demonstration of good cause, because any Applicant could file late upon payment of the "Very Late" filing fee.

All fees are subject to waiver by the Board upon written request by the Applicant, so that an Applicant who convincingly demonstrates lack of financial means or other extreme, exigent circumstances will not be prohibited from taking the exam for such reasons. Any fee increases would continue to be at the discretion of the Texas Supreme Court by revision to Rule XVIII.

### **3.A. Brief Description of Issue – Verified Applications for the Bar Exam.**

Currently, all applications for admission to the Texas Bar Exam must be made in the form of a "verified affidavit" by which the Applicant attests that no adverse events have occurred since

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<sup>6</sup> American Bar Association Section of Legal Education and Admission to the Bar.

the Applicant filed a Declaration of Intention to Study Law, with regard to the Applicant's criminal history, mental health and civil litigation matters, including any allegations of fraud.<sup>7</sup> The verified affidavit requirement is referred to in Government Code, Sec. 82.027(a) and 82.030.

The requirement of a verified (notarized) application is one of the factors leading to the Board's long standing requirement for filing paper applications. Verifications have been removed from all other forms promulgated by the Board, such as the Declaration of Intention to Study Law and Authorization and Release forms. Because existing provisions of the Texas Penal Code make falsifying a government record a crime, the Board believes that the current requirement for a verified affidavit is unnecessarily burdensome and should be eliminated.

### **3.B. Discussion.**

Elimination of the verified affidavit requirement would facilitate the Board's transition to electronic filing of all applications. Although the Board has made its application forms available on its website for many years, the verification requirement is an impediment to submission of applications in electronic form. The Supreme Court recently revised Rule 1(c) of the *Rules Governing Admission to the Bar*, to allow electronically signed documents to be submitted, and to eliminate the provision for timely filing by U.S. Mail.<sup>8</sup> With this rule change and elimination of the verified application provision, the Board may require all filings and payments to be made online. Other state licensing agencies, such as the Texas Medical Board and Board of Nursing have successfully implemented online filing requirements, demonstrating the efficiency and effectiveness of this approach.

### **3.C. Possible Solutions and Impact.**

Prior to implementation of online fee payment in 2015, the Board received approximately 5,000 paper applications and collected over \$3 million in checks and money orders, annually, by mail. The administrative burden of processing these submissions is significant and is compounded by the fact that Applicants often fail to complete applications or to submit fees in the correct amount, requiring the Board to return the applications and payments and request re-submission by mail. The Board has revised its forms to eliminate the need for "wet" signatures and paper applications. Elimination of the "verified affidavit" requirement on the Bar Exam application is needed to complete the transition to an electronic application process.

Electronic payment and application will reduce the administrative burden on the Board staff, and reduce expenses. Elimination of the verified application requirement will be more convenient and less burdensome for Applicants and will facilitate electronic application processes. This revision is consistent with recommendations by the Sunset Commission for other state licensing agencies, such as the Board of Nurse Examiners (now Board of Nursing).<sup>9</sup> It is also in keeping with the statutory directive to the Board to utilize technological solutions to improve the ability to perform Board functions as provided in Government Code Sec. 82.013.

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<sup>7</sup> As further discussed below, the statute does not address the application requirements for an out of state Applicant who does not file a Declaration of Intention to Study Law as a first year Texas law school student.

<sup>8</sup> Misc. Docket No. 15-9116, Order of the Supreme Court, June 23, 2015.

<sup>9</sup> Sunset Advisory Commission Summary of Recommendations, Board of Nurse Examiners, February 2007.

#### **4.A. Brief Description of Issue - Non-resident Applicants.**

The current bar exam application requirements in Government Code, Sec. 82.027 only contemplate filing by Applicants who give notice of their intention to apply for Texas Bar admission by filing a Declaration of Intention to Study Law, during the first year of law school, as required by Sec. 82.023. The statute requires the Board to complete its character and fitness investigation by August 1 for first year law students who file a Declaration by January 1. The Supreme Court rules only require Texas law school students to file a Declaration on or before specific dates allowing for those who enter law school in the Spring and Summer and for Baylor Law School students who operate on a quarter hour system. The rules allow the Board 270 days, or approximately nine months, to complete the investigation even for those who file before January 1. The statute allows 270 days for the investigation only for Declarations filed after January 1. The statute directs the Board to complete investigations on Declarations filed before January 1 and August 1 of the following year, or not less than eight months.<sup>10</sup> Upon filing an Application for the Bar Exam, the Board is allowed only 150 days to conduct its investigation of the Applicant, by statutory directive.

The Supreme Court Rules provide the detailed operational framework for the Board's work qualifying Applicants for admission to the Bar, but they are not consistent with the current provisions of Government Code, Chapter 82. Because the statute does not contemplate Applicants who never file a Declaration of Intention to Study Law, the time allowed for the Board's investigations is neither reasonable nor consistent.

#### **4.B. Discussion.**

The statute does not currently address Applicants who do not contemplate seeking Texas Bar admission during the first year of law school. In fact, in July 2014, 909 or about 35% of the 2,548 Texas Bar examinees were attorneys or Applicants from other states or foreign countries. The number of foreign trained Applicants has also increased substantially since the Texas Supreme Court amended Rule XIII revising the requirements for foreign trained Applicants to be admitted to the exam, beginning in October 2014.

Most states have eliminated the first year law student investigation process entirely. The Board staff does not recommend that Texas follow that approach, however, the statute should be revised to provide for applications filed by non-residents or others who do not contemplate taking the Texas Bar Exam and do not file a Declaration of Intention to Study Law. The requirement that the investigation be completed by August 1 on Declarations filed by January 1, should be eliminated, because it does not contemplate the large number of students who do not begin law study in the fall and because a staggered deadline, as provided by Supreme Court Rule VI(b)(3) is more easily and efficiently administered.

The Supreme Court Rule VI clarifies for Applicants that all Texas law students must file a Declaration of Intention to Study Law. Rule IX provides that every Applicant, "whether or not such Applicant was required under Rule VI to file a Declaration" must file an application to take the Texas Bar Examination. There is a discrepancy, however, between the Supreme Court rules

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<sup>10</sup> Government Code Sec. 82.023(c).

and the Government Code provisions in Secs. 82.023 and 82.027 which contemplate that all Applicants file a Declaration of Intention to Study Law followed by an Application to take the Texas Bar Exam, updating information provided on the Declaration. In fact, under the Supreme Court Rules, more than one third of Applicants do not file a Declaration during law school because they did not attend a Texas law school.

The consequence of this discrepancy for the work of the Board is significant. Under the Supreme Court Rules, the Board is allowed no less than 270 days to investigate the character and fitness of Texas law school students who file a Declaration of Intention to Study Law. For more than a third of bar Applicants, who did not attend a Texas law school, the Board is allowed only 150 days to complete its investigation. Most Texas law students file a Declaration during their first year of study, so that the Board must only update its investigation when the student applies to take the bar exam. Some Texas law students pay a \$150 late fee and file the Declaration concurrently with the Application. For these Applicants with untimely filed Declarations, the Board is still allowed 270 days to investigate those Applicants, but only 150 days to investigate an out of state Applicant filing at the same time.

#### **4.C. Possible Solutions and Impact.**

The Board is working to make more effective use of technology, as directed by Sec. 82.013, to improve public service and access, and to increase efficiency. The Board proposes that the time periods allowed for completion of investigations and the deadlines for filing Declarations and Bar Exam Applications be established by Supreme Court Rules that can more readily be adjusted in response to technological improvements, demographic shifts and market forces. Elimination of statutory deadlines for filing and investigations will provide increased flexibility in managing the work of the Board and will allow the Supreme Court to eliminate the disparity in time allowed to investigate out of state Applicants compared to Texas law school Applicants.

#### **5.A. Brief Discussion of Issue – Non renewal of Bar license provisions in Chapter 82.**

Consistent with the heading “Board of Law Examiners” every provision in Subchapter A of Texas Government Code, Chapter 82 relates to the existence, duties and functions of the Board of Law Examiners, except for Sec. 82.022(c) which provides as follows:

The Supreme Court shall adopt rules relating to the nonrenewal of the license of a lawyer who is in default on a loan guaranteed under Chapter 57, Education Code, by the Texas Guaranteed Student Loan Corporation.

The Board of Law Examiners has no role in the renewal of law licenses, and has no ability to implement any such rule adopted by the Texas Supreme Court. Law licenses are renewed by the State Bar of Texas and this rulemaking provision is more logically related to that entity.

#### **5.B. Discussion.**

This provision pertaining to nonrenewal of law licenses is more relevant to Section 81.054 of the State Bar Act relating to payment of bar dues established by the Supreme Court. Anyone who is interested in statutes regulating renewal of bar membership would expect to find any grounds for nonrenewal in that section of the Government Code, not in Subchapter A that is

otherwise exclusively concerned with qualifying Applicants for admission to the Bar by the Board of Law Examiners.

This provision does not, by its terms, disqualify an Applicant from admission to the Bar who is in default on a Texas Guaranteed Student Loan. If the intent was to provide for such disqualification, the statute is not effective for that purpose. The Board does investigate the financial responsibility of Applicants, and would consider default on a student loan as a factor, but it does not screen Applicants with the Texas Guaranteed Student Loan Corporation and does not absolutely disqualify them for admission on that basis alone.

### **5.C. Possible Solutions and Impact.**

The Board proposes relocating Government Code Sec. 82.022(c) to Sec. 81.054, of the State Bar Act relating to license renewal.

### **6.A. Brief Discussion of Issue: The Americans with Disability Act may conflict with provisions authorizing mental illness and chemical dependency as independent grounds to deny unconditional admission to the Bar.**

Recent ADA enforcement actions by the U.S. Department of Justice against state bar licensing entities have been based on the proposition that the ADA prohibits discrimination against Applicants' with a history of mental health diagnosis and treatment. These enforcement actions seek to prevent alleged discrimination by requiring licensing entities to focus fitness investigations on evidence of "conduct" indicating lack of fitness such as criminal history or scholastic discipline, rather than mental health "treatment or diagnosis."

These enforcement actions call into question the legality of the statutory authority to ask Applicants to report any history of mental illness, diagnosis or treatment.

### **6.B. Discussion.**

In August 2014, the Louisiana Supreme Court made a settlement agreement with the U.S. Department of Justice, agreeing to pay \$200,000 and to revise its investigation and licensing processes for bar Applicants with mental health and chemical dependency treatment history, in order to comply with the ADA.<sup>11</sup> Since then, the DOJ has initiated similar enforcement action against the Florida bar licensing entity for possible ADA violations. The DOJ has asserted in those enforcement actions that inquiries and admission decisions focused on a mental health diagnosis or treatment alone, without evidence of any related conduct indicating lack of fitness, violate the ADA protections for persons with mental health disabilities.

The application questions at issue in the Louisiana enforcement action included those inquiring about substance abuse and alcohol abuse.

Preceding announcement of the Louisiana settlement, the NCBE agreed to revise its application questions about mental health history to focus on conduct rather than mental health diagnosis

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<sup>11</sup> Press Release by Louisiana Supreme court, August 18, 2014.

or treatment.<sup>12</sup> The American Bar Association Commission on Disability Rights has proposed a resolution to the ABA House of Delegates that, if adopted, would urge state bar licensing entities to “eliminate any questions that ask about mental health history, diagnosis or treatment and instead focus questions on conduct or behavior that in a material way impairs an Applicant’s ability to practice law in a competent, ethical and professional manner.”<sup>13</sup>

Government Code Secs. 82.027 and 82.023 direct the Board to ask if persons filing a Declaration of Intention to Study Law or an Application for the Texas Bar Exam are not “mentally ill.” Section 82.038 directs the Board to issue a probationary license to a person who “suffers from chemical dependency.” Section 82.028 also requires the Board to find a “clear and rational connection between the Applicant’s present mental or emotional condition and the likelihood that the Applicant will not discharge properly the Applicant’s responsibilities to a client, a court or the legal profession if the Applicant is licensed to practice law.” These statutory directives appear to authorize the Board to determine fitness based solely on an Applicant’s mental health condition or diagnosis. The statute presumes that an Applicant with a chemical dependency diagnosis is unfit as indicated by Sec. 82.038(f) which prohibits the Board from recommending a regular license for a person who has received a probationary license, “unless the board finds that the person has successfully completed treatment and has been free from chemical dependency for the preceding two years.”

As a practical matter, in the absence of misconduct related to the Applicant’s mental health condition, the Board is not likely to deny admission or require a probationary license for Applicants with a diagnosis of bipolar disorder, paranoia, schizophrenia or other psychotic disorder, if that condition is being effectively treated. The Board does not inquire about other forms of mental illness, such as depression. The Board does inquire about any treatment for use or abuse of alcohol or any other substance. If the Board finds the Applicant to be chemically dependent, unless the Applicant attests to two years of sobriety, the Board considers a probationary license to be mandatory.

On their face, these statutory directives arguably conflict with the DOJ’s interpretation and enforcement of the ADA and are a potential basis for discrimination claims by Applicants with a history of mental illness or chemical dependency who have no other history of misconduct and do not wish to report their diagnosis and treatment history.

### **6.C. Possible Solutions and Impact.**

To eliminate the risk of DOJ enforcement action, the obvious response is to delete Government Code Sec. 82.027(a)(2) that requires an Applicant to state that he or she “is not mentally ill.” Before changes made in 2015, the Board implemented this provision by use of application questions seeking information about diagnosis, treatment or hospitalization for bi-polar disorder, schizophrenia, paranoia or other psychotic disorder, within the past ten years. Revisions made in 2015 are focused on conduct and the “look back period” was shortened from

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<sup>12</sup> NCBE provides fee-based character and fitness investigation services for states that choose not to perform that function.

<sup>13</sup> Report of ABA Commission on Disability Rights, Section of Individual Rights and Responsibilities, August 2015.

ten years to five years. A copy of the portion of the current application form pertaining to mental health issues is attached as Attachment 21.

The Board continues to inquire about mental health diagnosis or any chemical dependency treatment or diagnosis within the past five years. In most cases, evidence of misconduct is also relied upon by the Board in proposing to grant or deny an application for admission. If the “mentally ill” factor is removed from the statute, the Board will have more flexibility in the way it addresses fitness issues, in compliance with the ADA.

The statutory chemical dependency provisions less clearly implicate the ADA. The ADA does not provide protection from discrimination for persons who have not sought treatment and are not in recovery. The statutory requirement for licensure of a person with a diagnosis of chemical dependency, with treatment followed by two years of sobriety, is arguably consistent with the ADA.

## X. Other Contacts

- A. Fill in the following charts with updated information on people with an interest in your agency, and be sure to include the most recent email address.

### Texas Board of Law Examiners Exhibit 14: Contacts

#### **Interest Groups**

*(groups affected by agency actions or that represent others served by or affected by agency actions)*

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Baylor University Dean Bradley Toben	Umpfrey Law Center 1114 South University Parks Dr. One Bear Place Box 97288 Waco, TX 76798	254-710-1911	<a href="mailto:brad_toben@baylor.edu">brad_toben@baylor.edu</a>
St. Mary’s School of Law Steven Sheppard, Dean	School of Law One Camino Santa Maria San Antonio, TX 78228- 8602	210-436-3530	<a href="mailto:sheppard@stmarytx.edu">sheppard@stmarytx.edu</a>
South Texas College of Law Donald Guter, Dean	1303 San Jacinto Street Houston, TX 77002-7000	713-646-1819	<a href="mailto:dguter@stcl.edu">dguter@stcl.edu</a>
Southern Methodist University Jennifer Collins, Dean	Dedman School of Law P. O. Box 750116 Storey Hall, Room 125 Dallas, TX 75275-0116	214-768-2621	<a href="mailto:jcm@smu.edu">jcm@smu.edu</a>

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Texas A & M University Andy Morriss, Dean	School of Law 1515 Commerce Fort Worth, TX 76102	817-212-4114	<a href="mailto:amoriss@law.tamu.edu">amoriss@law.tamu.edu</a>
Texas Southern University Dannye Holley, Dean	Thurgood Marshall School of Law 3100 Cleburne Avenue Houston, TX 77004	713-313-1071	<a href="mailto:dholley@tmslaw.tsu.edu">dholley@tmslaw.tsu.edu</a>
Texas Tech University Darby Dickerson, Dean	School of Law 1802 Hartford, Mail Station 0004 Lubbock, TX 79409-0004	806-834-5421	<a href="mailto:darby.dickerson@ttu.edu">darby.dickerson@ttu.edu</a>
University of Houston Law Center Leonard Baynes, Dean	100 Law Center Houston, TX 77204-6060	713-743-2259	<a href="mailto:lbaynes@central.uh.edu">lbaynes@central.uh.edu</a>
University of Texas Ward Farnsworth, Dean	School of Law 727 East Dean Keeton St. Austin, TX 78705	512-232-1120	<a href="mailto:wf@law.utexas.edu">wf@law.utexas.edu</a>

***Interagency, State, or National Associations***

*(that serve as an information clearinghouse or regularly interact with your agency)*

Group or Association Name/ Contact Person	Address	Telephone	Email Address
National Conference of Bar Examiners Erica Moeser, Director	302 South Bedford Street Madison, WI 53703	608-280-8550	<a href="mailto:emoeser@ncbex.org">emoeser@ncbex.org</a>
Conference of Bar Administrators Association Allison Drish, Chair	205 W. 14 <sup>th</sup> Street, Suite 500 Austin, TX 78711	512-463-5411	<a href="mailto:adrish@ncbex.org">adrish@ncbex.org</a>

***Liaisons at Other State Agencies***

*(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)*

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Office of Attorney General Mariel Puryear	209 W. 14 <sup>th</sup> Street Austin, TX 78711	512-475-4054	<a href="mailto:Mariel.puryear@texasattorneygeneral.gov">Mariel.puryear@texasattorneygeneral.gov</a>

<b>Agency Name / Relationship / Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>Email Address</b>
Supreme Court of Texas Justice Don Willett	203 W. 14 <sup>th</sup> Street Austin, TX 78711	512-463-1344	<a href="mailto:Don.willett@txcourts.gov">Don.willett@txcourts.gov</a>
State Bar of Texas Sandra Gavin	1414 Colorado Austin, TX 78711	512-427-1463	<a href="mailto:sandra.gavin@texasbar.com">sandra.gavin@texasbar.com</a>
State Office of Risk Management Belinda Hood Jacqueline Baynard Michelle Hammett Lisa Bell	300 W. 15 <sup>th</sup> , 6 <sup>th</sup> Floor Austin, TX 78711	512-475-1440	<a href="mailto:belinda.hood@sorm.state.tx.us">belinda.hood@sorm.state.tx.us</a> <a href="mailto:Jacqueline.Baynard@sorm.state.tx.us">Jacqueline.Baynard@sorm.state.tx.us</a> <a href="mailto:Michelle.Hammett@sorm.state.tx.us">Michelle.Hammett@sorm.state.tx.us</a> <a href="mailto:lisa.bell@sorm.state.tx.us">lisa.bell@sorm.state.tx.us</a>
Texas Facilities Commission Vernica Moreno Ray Bates	1711 San Jacinto Austin, TX 78711	512-463-9703 512-463-5420	<a href="mailto:veronica.moreno@tfc.state.tx.us">veronica.moreno@tfc.state.tx.us</a> <a href="mailto:ray.bates@tfc.state.tx.us">ray.bates@tfc.state.tx.us</a>
Department of Information Resources Bryan Bradsby	300 W. 15 <sup>th</sup> , Suite 1300 Austin, TX 78711	512-936-2248	<a href="mailto:Bryan.Bradsby@capnet.state.tx.us">Bryan.Bradsby@capnet.state.tx.us</a>
Texas Secretary of State	1100 Congress P.O. Box 12697 Austin, TX	512-463-5555	Texas Register for posting Agendas
DPS Debra McElroy Kari Raesz	Texas Department Of Public Safety Region VII – Capitol 1500 N. Congress Ave. Austin, TX 78701	512-463-3530 512-936-2203	<a href="mailto:Debra.McElroy@dps.texas.gov">Debra.McElroy@dps.texas.gov</a> <a href="mailto:Kari.Raesz@dps.texas.gov">Kari.Raesz@dps.texas.gov</a>
Office of Court Administration Ronny Ondreas	Information Services Texas Office of Court Administration 205 W. 14 <sup>th</sup> Street, Suite 600 Administration Austin, TX 78711	512-463-4405	<a href="mailto:Ronny.Ondreas@txcourts.gov">Ronny.Ondreas@txcourts.gov</a>
Texas Lawyers' Assistance Program Bree Buchanan	1414 Colorado Street Austin, TX 78711	800-343-8527	<a href="mailto:bree.buchanan@texasbar.com">bree.buchanan@texasbar.com</a>

## XI. Additional Information

### A. Texas Board of Law Examiners Exhibit 15: Evaluation of Agency Reporting Requirements

Report Title	Legal Authority	Due Date and Frequency	Recipient	Description	Is the Report Still Needed? Why?
Financial Report	Govt Code 82.035	Annual	Supreme Court	Financial Accounting	Yes-Fiscal accountability
Bar Exam Results	Govt. Code 82.029	On Request and Texas Law Schools	Legislature	Exam Performance	Yes-law school preparation of students to Bar Exam

- B. Has the agency implemented statutory requirements to ensure the use of "first person respectful language"? Please explain and include any statutory provisions that prohibit these changes.**

These changes are not prohibited by any statute, but the first person respectful legislation (HB 1481, 82<sup>nd</sup> R.S.) does not apply to the Board of Law Examiners. Supreme Court Rule XII (Examinee with Disabilities) complies with the first person respectful language, and the Board seeks to do so in all its written statements and communications.

- C. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.**

### Texas Board of Law Examiners Exhibit 16: Complaints Against the Agency — Fiscal Years 2013 and 2014

	Fiscal Year 2013	Fiscal Year 2014
Number of complaints received	1	None
Number of complaints resolved	1	None
Number of complaints dropped / found to be without merit	None	None
Number of complaints pending from prior years	None	None
Average time period for resolution of a complaint	1 week	None

- D. Fill in the following charts detailing your agency's Historically Underutilized Business (HUB) purchases.**

**Board of Law Examiners  
Exhibit 17: Purchases from HUBs**

***Fiscal Year 2013***

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal*	Statewide Goal
Professional Fees	\$405,422	\$189,627	47%	N/A	N/A
Mat, Sup, F&E	\$140,306	\$16,746	12%	N/A	N/A
<b>TOTAL</b>					

\* If your goals are agency specific-goals and not statewide goals, please provide the goal percentages and describe the method used to determine those goals. (TAC Title 34, Part 1, Chapter 20, Rule 20.13)

***Fiscal Year 2014***

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Professional Fees	\$418,275	\$206,353	49%	N/A	N/A
Mat, Sup, F&E	\$142,791	\$7,324	5%	N/A	N/A
<b>TOTAL</b>					

***Fiscal Year 2015***

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Professional Fees [est]	\$415,081	\$212,352	51%	N/A	11.2%
Mat, Sup, F&E [est]	\$110,287	\$6,653	6%	N/a	
<b>TOTAL</b>					

**E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)**

The Texas Board of Law Examiners has and will continue to seek every opportunity to utilize HUBs. Whenever purchase of goods or services are contemplated, purchasing staff reviews the Comptroller’s website for opportunities to engage the services of HUBs.

**F. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)**

Chapter 2161 does not apply to the Board of Law Examiners because it does not pay for any projects, goods or services with appropriated money.

G. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.

1. Do you have a HUB coordinator? If yes, provide name and contact information. (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.26)

Not applicable.

2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.27)

Not applicable.

3. Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.28)

Not applicable.

H. Fill in the charts below detailing your agency's Equal Employment Opportunity (EEO) statistics.

**Board of Law Examiners  
Exhibit 18: Equal Employment Opportunity Statistics**

**1. Officials / Administration**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	12	8.3%	8.99%	16.7%	19.51%	41.6%	39.34%
2014	12	8.3%	8.99%	16.7%	19.51%	58.3%	39.34%
2015	12	8.3%	8.99%	25%	19.51%	66%	39.34%

**2. Professional**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	5	0.00%	11.33%	0.00%	17.4%	40.00%	59.14%
2014	5	0.00%	11.33%	0.00%	1.74%	40.00%	59.14%
2015	5	0.00%	11.33%	0.00%	17.4%	40.00%	59.14%

**3. Technical**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	7	0.00%	14.16%	14.00%	21.36%	86.00%	41.47%
2014	7	0.00%	14.16%	0.00%	21.36%	86.00%	41.47%
2015	7	14.00%	14.16%	0.00%	21.36%	71.00%	41.47%

**4. Administrative Support**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	5	0.00%	13.57%	40.00%	30.53%	80.00%	65.62%
2014	4	0.00%	13.57%	50.00%	30.53%	75.00%	65.62%
2015	4	0.00%	13.57%	50.00%	30.53%	75.00%	65.62%

**5. Service / Maintenance**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
Not Applicable							

**6. Skilled Craft**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	1	0	6.35%	0	47.44%	0	4.19%
2014	1	0	6.35%	0	47.44%	0	4.19%
2015	1	0	6.35%	0	47.44%	0	4.19%

**I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?**

Yes. The Board is committed to the principles of equal employment opportunity. All Applicants are considered for employment on the basis of job-related qualifications without regard to race, color, religion, sex, sexual orientation, national origin, age, disability, or political affiliation.

The policy was adopted in 1995 in order to facilitate compliance with federal and state legislation aimed at affording equal employment opportunities to persons seeking and holding employment with the State of Texas:

1. The Board shall not select any individual for employment, advancement, or training on the basis of race, color, disability, sex, religion, age, or national origin.
2. The Board shall, in the dissemination of information about employment, advancement, or training opportunities, use such methods as are designed to reach all persons, regardless of race, color, disability, sex, religion, age, or national origin.
3. Minority group Applicants shall be considered on the basis of their aptitudes, experience, and interests, rather than traditional occupational patterns for such persons.
4. Any employment aptitude or proficiency tests utilized by the Board shall be administered without regard to the race, color, disability, sex, religion, age, or national origin of Applicant.
5. In the taking of applications for employment, the Board shall, when interviewing a member of minority groups, obtain all information required for job placement and record such information accurately; refrain from recording any identification by code or otherwise of the race, color, or national origin of the Applicant, except as may be required by law; and provide each Applicant with all information pertinent to the available employment position.
6. In selecting individuals for employment, advancement, or training, the Board shall make its decision based on individual experience, education, qualifications, ability, performance, dedication, and references, and not on race, color, disability, sex, religion, age, or national origin.
7. The Board shall prepare, and file with the Supreme Court of Texas and the Office of the Governor, an Equal Employment Opportunity policy statement, at least annually, which contains the policies set forth above, as well as the following information:
  - a. a comprehensive analysis of the Board's work force that meets federal and state guidelines;
  - b. a determination of whether the Board's work force meets federal and state guidelines adopted to encourage a balanced work force; and
  - c. a statement setting forth reasonable methods to address any imbalance determined to exist.

## **XII. Agency Comments**

No such additional information has been identified, however, any additional information requested will be promptly provided.